

JQJ IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JESSICA RAMSAY,
Plaintiff,

v.

NATIONAL BOARD OF MEDICAL
EXAMINERS,
Defendant.

: CIVIL ACTION NO.
: 2:19-cv-02002

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:
:
: PRELIMINARY
: INJUNCTION HEARING
: DAY 1

James A. Byrne U.S. Courthouse
601 Market Street
Philadelphia, PA 19106
December 3, 2019
Commencing at 10:44 a.m.

BEFORE THE HONORABLE J. CURTIS JOYNER

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1 (Court called to order at 10:44 a.m.)

2 THE COURT: You may be seated. Good morning.

3 RESPONSE: Good morning, Your Honor.

4 THE COURT: All right, Counsel. Are we ready to
5 proceed in Ramsay v. National Board of Medical Examiners?

6 MR. BURGOYNE: Yes, Your Honor.

7 MR. BERGER: Yes, Your Honor.

8 THE COURT: Very good.

9 Let me hear from you.

10 Obviously I'm familiar with the reasons why we're
11 here, in reference to the injunction hearing today. And I saw
12 your pleadings, memorandums.

13 So if you want to make a brief opening statement, you
14 can. If you don't, that's fine. We can move on. Your choice.

15 MS. VARGAS: Just briefly, Your Honor. My name is
16 Mary Vargas, and this is Larry Berger, and together we
17 represent the plaintiff, Jessica Ramsay, who is with us at
18 counsel table.

19 Jessica Ramsay is an extraordinary young woman. She's
20 completed three years of medical school successfully. She's
21 been nominated by her peers for an honors award, an honor
22 society, because of her excellence in care of patients. And
23 part of what makes Ms. Ramsay so extraordinary is what she's
24 achieved despite a lifetime of struggling with reading and
25 focus.

1 Since Ms. Ramsay was a small child, she's required
2 extra time. She's received accommodations either formally or
3 informally throughout her life. But we're here because the
4 National Board of Medical Examiners, which administers the
5 United States Medical Licensing Examination, the USMLE, has
6 refused repeated requests and a wealth of documentation to
7 provide her here the accommodation that is very basic, that is
8 nothing unusual in the world of test administration, and it
9 costs them nothing to provide her at this point.

10 So despite all of her hard work, despite all of the
11 evidence that she's provided, she's now very literally on the
12 precipice of losing her future. Her ability to be a doctor, to
13 practice medicine, rests on what this Court does. She must
14 take the USMLE Step 1 by March 2, 2020, or she will be
15 dismissed from medical school and that will be the end of her
16 career. This isn't like law school where you can transfer. In
17 medical school it is almost unheard of for a student to go to
18 another medical school. And it is entirely impossible once
19 you've been dismissed. You have to be a student in good
20 standing to even begin the process of trying to transfer to
21 another medical school.

22 Every expert that has examined Ms. Ramsay, all of her
23 treating sources, her medical school, their faculty, her
24 college, her teachers when she was younger, everyone has
25 recognized the same thing, that she has difficulty reading,

1 that reading is slow and laborious for her. She is a brilliant
2 young woman, but she has dyslexia and she has ADHD.

3 So in order for her to read, as you'll hear in her
4 testimony, it's an entirely different process from what you and
5 I might do, and it takes significantly more time. The question
6 that is before the Court, as I understood from Mr. Burgoyne
7 when we met in August or September in chambers, is a very
8 limited one. It's a question of whether or not Ms. Ramsay has
9 a disability. This isn't a question where we look to the DSM.
10 This isn't really even a question where experts ought to be
11 competing with each other. This is a question of whether she
12 has a substantial impairment that limits a major life activity
13 such as reading. And the evidence will show that she does.

14 In the face of an extraordinary amount of evidence
15 from multiple sources showing that she needs extra time, the
16 NBME is offering only one thing -- well, really two things.
17 They're offering the testimony of two hired NBME consultants
18 who reviewed papers that Ms. Ramsay submitted. They did not
19 evaluate Ms. Ramsay. They haven't even met her before today.
20 And in the context of learning disabilities, the United States
21 Department of Justice has recognized that it is critically
22 important, specifically for learning disabilities, that an
23 individual be examined in person.

24 When the ADA Amendments Act was passed in 2008, the
25 entire purpose of that change in the law was to make it less of

1 a focus on determining narrowly whether somebody has a
2 disability. There were Supreme Court decisions that very
3 narrowly interpreted that analysis. The change in the law was
4 intended to avoid the very reason that we're here. And the
5 NBME participated in that process, objected to the changes in
6 the law, sought to have the regulations not say what they
7 actually say. And having failed to do that before in the
8 legislative process, they are now trying to do that on Ms.
9 Ramsay's back in this courtroom.

10 We ask the Court to apply the law as it's written, the
11 regulations as they were promulgated. The United States
12 Department of Justice testing accommodations guidelines and
13 technical assistance as it was drafted, not what the NBME
14 wishes it was and not what they're trying to change it to be in
15 this courtroom.

16 And just to go very quickly through the key points of
17 that law. First of all, Congress has said that the
18 determination of disability should not require extensive
19 analysis, that the definition of disability is meant to be
20 broadly defined, that whether a person is disabled is
21 determined without regard for any kind of self-mitigation or
22 ameliorative effects of mitigating measures.

23 The Department of Justice has specifically said with
24 respect to testing entities that they should defer to the
25 opinion of qualified professionals who have actually examined

1 the candidate in question.

2 And most notably -- and I'm going to read this part so
3 I don't get it wrong -- a person with a history of academic
4 success may still be a person with a disability who is entitled
5 to testing accommodations under the ADA. A history of academic
6 success does not mean that a person does not have a disability
7 that requires testing accommodations. For example, someone
8 with a learning disability may achieve a high level of academic
9 success but may nevertheless be substantially limited in one or
10 more of the major life activities of reading, writing, speaking
11 or learning because of the additional time or effort he or she
12 must spend to read, write, speak or learn.

13 That is Ms. Ramsay.

14 And finally -- well, two things.

15 The Department of Justice has said that reliance on a
16 student's grades, for example, what they got in history in 3rd
17 grade or what they got on a standardized test, reliance on that
18 in determining disability is inconsistent with the
19 Congressional intent in enacting the ADA Amendments Act. And
20 that's what the NBME is asking this Court to do.

21 Finally, the regulations provide that testing entities
22 have to make accommodations, not to just let the person in the
23 door, but to make sure that the testing is administered in a
24 way so that it best ensures that the candidate or the student
25 is showing what they know and is not showing their disability.

1 And that is critical for Ms. Ramsay. Having the extended time
2 in a separate room, that with extended break time, that is how
3 she can best show what she knows because of a lifetime of
4 reading disabilities.

5 So in the real world, with the law and the
6 regulations, all of the documentary evidence, all of her
7 history of accommodations, she has demonstrated that she needs
8 the accommodations that she's requested. And applying the law
9 as it actually is mandates a conclusion that she needs those
10 accommodations. There is an extraordinary likelihood of
11 success on the merits in this case.

12 The public interest must support an accomplished young
13 woman who has fought tooth and nail to achieve despite
14 disabilities. They must support her. And in this case there
15 is no cost to the NBME because they've already agreed that she
16 can have the test over two days. So doing the test with
17 extended time, it's still a two-day test. It doesn't require
18 any additional testing beyond that. There is no cost.

19 And most importantly, it allows us to have a young
20 woman who has worked incredibly hard for what she's
21 accomplished to become a doctor. And that's the kind of doctor
22 that I want, and that's certainly the kind of doctor that the
23 public interest wants to be supporting.

24 Thank you.

25 THE COURT: Very well. Yes, Counsel.

1 MR. BURGOYNE: Thank you, Your Honor. Robert Burgoyne
2 for the National Board of Medical Examiners. And with me today
3 is my colleague, Caroline Mew.

4 We're here today, Your Honor, as you know, on a motion
5 for a preliminary injunction which the Supreme Court has
6 described as a drastic and extreme remedy.

7 The burden on Ms. Ramsay in this case is to establish
8 that all four preliminary injunction factors support her
9 request for relief, and it's a burden that's even higher
10 because she's seeking a mandatory preliminary injunction.
11 She's asking the Court to give her the relief that she's
12 otherwise entitled to only if she prevails on the merits at the
13 end of the case.

14 It's a burden she can't meet on this case. The first
15 factor, likelihood of success on the merits. We don't disagree
16 that Ms. Ramsay is an extraordinary young woman from everything
17 we've seen. We don't disagree that she's worked hard in
18 medical school. Most students do. Where we do disagree is
19 whether she meets the ADA standard for being disabled, because
20 she's only entitled to accommodations on the NBME licensing
21 exams if she's substantially limited in a major life activity
22 relevant to taking the exam as compared to most people in the
23 general population, not compared to her medical school peers,
24 not compared to other individuals with high school or college
25 educations, compared to the general population.

1 That's a burden she can't meet in light of the real
2 world evidence that is in the record and the Court will hear
3 today.

4 Ms. Vargas referred to the real world. What the real
5 world objective evidence has shown is that Ms. Ramsay was not
6 diagnosed with dyslexia until 2018. We'll hear from the expert
7 who was the first expert to identify her as having dyslexia.

8 She was first identified with having ADHD in 2009 when
9 she went in to see her primary care physician, met with him for
10 half an hour, was diagnosed with ADHD and put on Ritalin and
11 then obtained accommodations starting at the end of her
12 sophomore year in college. Prior to that point, no one had
13 ever diagnosed her formally with ADHD or dyslexia. She had
14 never received accommodations in her high school years or
15 college years up until the end of her sophomore year in
16 college.

17 And notwithstanding that fact, she was an excellent
18 student, receiving mostly As, occasionally Bs, National Honor
19 Society, participated in varsity sports, took many standardized
20 tests that regrettably we will painfully walk through in which
21 she performed not just average but at the upper echelon. She
22 did extremely well on other standardized tests, including the
23 ACT College Admission Test, which she took twice and on the
24 second time scored in the 95th percentile, and then also on the
25 Medical College Admission Test in which her overall score was

1 in the 79th percentile, an exam taken by a very accomplished
2 population and an exam as to which one has to have strong
3 reading and comprehension.

4 We also believe that Ms. Ramsay won't be able to
5 established irreparable harm, the other key factor for a
6 preliminary injunction. In order to be irreparably harmed, she
7 has to show that she will suffer immediate and certain
8 irreparable harm. The harm at issue here is a delay in her
9 medical education, the core irreparable harm. Her medical
10 school has said she has the option. If she doesn't, she has to
11 take the Step 1 exam prior to March 2, 2020. Or she could
12 withdraw and then reapply to the school. Or she could simply
13 test in the meantime with the accommodations that NBME has
14 approved for her. So she's not going to be able to establish a
15 clear and certain likelihood of immediate irreparable harm.

16 There was a fair amount of reference to the Department
17 of Justice's guidance. The Department of Justice itself has
18 said that any guidance we issue has no legal impact beyond the
19 statute or the regulations, which is to say that if there are
20 obligations found in technical guidance documents, the DOJ
21 won't enforce those obligations if they don't trace back to the
22 actual statutory language or the regulatory language. There's
23 nothing in the ADA that requires the National Board of Medical
24 Examiners to defer to an examinee's treating professional.
25 There's nothing in the DOJ guidance that prohibits the NBME

1 from getting input from external experts. In fact, that's a
2 good thing. NBME doesn't make these decisions on their own.
3 They go to external professionals with expertise in the area of
4 the impairment and get input before they make their decisions,
5 and they did that in this case.

6 There's nothing in the ADA Amendments Act that changed
7 the ultimate legal standard, which is to say is someone
8 substantially limited as compared to most people in the general
9 population. There's no question it made the enforcement of the
10 statute broader and that that's what Congress anticipated, but
11 it didn't alter the standard in a way that impacts the outcome
12 of this case.

13 In many respects, this case is very much like a 2016
14 case decided by Judge Dalzell by the name of Bibber v. National
15 Board of Osteopathic Medical Examiners. A similar case,
16 plaintiff diagnosed with dyslexia, a longer history of
17 diagnosis, ultimately came time to take her licensing exam,
18 similar to the NBME licensing exam, and the Court ultimately
19 held that as compared to most people in the general population,
20 she wasn't disabled and therefore wasn't entitled to
21 accommodations, which again consisted primarily of extended
22 testing time. That was a case decided after the ADA Amendments
23 Act. And in deciding the case, Judge Dalzell looked to the
24 plaintiff's history of academic performance on real world
25 objective measures.

1 So for all these reasons, Your Honor, we encourage you
2 and ask the Court to deny the request for a preliminary
3 injunction.

4 THE COURT: Very good.

5 Let us proceed. Call your first witness.

6 MS. VARGAS: Your Honor, if I may ask, does the Court
7 have a preference where counsel stands or sits.

8 THE COURT: I don't just as long as the court reporter
9 is able to hear you clearly and loudly and take down any
10 testimony.

11 MS. VARGAS: Thank you.

12 THE COURT: So you can stay there. It doesn't matter.

13 MS. VARGAS: Thank you, Your Honor.

14 Then plaintiff calls Jessica Ramsay.

15 THE COURT: Ms. Ramsay, please come up here and watch
16 your step coming around the witness box. It has a slight
17 incline.

18 THE WITNESS: Can I bring the water?

19 THE COURT: Sure.

20 JESSICA RAMSAY, after having been duly sworn, was
21 examined and testified as follows:

22 COURT REPORTER: Please state your name for the
23 record.

24 THE WITNESS: Jessica Ramsay.

25 THE COURT: You may proceed, Counsel.

1 DIRECT EXAMINATION

2 BY MS. VARGAS:

3 Q. Good morning, Ms. Ramsay. What is your current
4 occupation?

5 A. I am a medical student currently on leave of absence.

6 THE COURT: Ma'am, you can bend that mic right
7 straight to you and speak directly into it. All right?

8 THE WITNESS: Is this good?

9 THE COURT: Keep your voice up loud and clear so if
10 you have to, you can shout.

11 THE WITNESS: Okay.

12 THE COURT: All right?

13 THE WITNESS: Yes.

14 BY MS. VARGAS:

15 Q. Ms. Ramsay, why did you want to go to medical school?

16 A. I think that the desire has evolved over time. I think --
17 I've always really enjoyed learning about the body and how it
18 works and what happens when it doesn't work and how to fix
19 that. And then growing up with my brothers who are autistic
20 and have a lot of other special needs, and having other
21 siblings that are foster siblings in my life, the desire to
22 learn more about that kind of built over time. And
23 particularly, I became interested in the genetics of it and how
24 that worked. And so I decided I wanted to study genetics in
25 college and picked schools that had a genetics program for

1 undergrad.

2 And then while I was there, I really kind of --

3 THE COURT: Go ahead. I don't want to stop you, but
4 it's still kind of very light.

5 THE WITNESS: I'm sorry.

6 THE COURT: It's okay.

7 COURT REPORTER: The microphone doesn't seem to be on.

8 THE COURT: You'll have to excuse me today. My clerk
9 is out.

10 And they were in here fixing or adjusting things
11 earlier. Let's see.

12 THE COURT: Tap that mic, would you, please. It's not
13 on.

14 BY MS. VARGAS:

15 Q. We'll continue. And if you can just speak as loud as you
16 can, we'll try to make this work.

17 A. Okay.

18 Q. So you were testifying about why you decided to go to
19 medical school.

20 A. Yeah.

21 Q. Had you finished answering that question or was there
22 more?

23 A. I think I was still talking.

24 Do you know what the last thing I said was?

25 I think I was still talking. Do you know what the last

1 thing I said was?

2 Q. Well, let me ask you this: Is there a certain area of
3 medicine that interests you?

4 A. I really want to go into pediatrics. It's something I'm
5 really passionate about.

6 Q. Why pediatrics?

7 A. Because I've always loved working with kids, so I was
8 drawn to that. And in my clinical rotations in my third year,
9 I liked learning everything.

10 But the difference was -- what sort of solidified this for
11 me was when I was on my pediatrics rotation, I -- no matter
12 what kind of day I was having in the morning, when I would go
13 in, and whether I was in the hospital or in the clinic, and
14 then come home, I was always having, like, a better day. I was
15 always happier coming home than when I went in. And that to me
16 just like screamed that that's what I was supposed to be doing.
17 And that's what I wanted to do with my life, and that's what
18 I'm going to do with my life, so...

19 Q. So you testified a few minutes ago that you're on leave
20 from medical school.

21 What happened?

22 A. Yeah. Well, first, I applied for accommodations for the
23 Step 1 exam, and I didn't receive them. And I discussed with
24 my school what my best option would be and was advised to go
25 ahead and try to take Step 1 without the accommodations to see

1 if I could stay on track with my class and graduate on time.
2 And I -- so I attempted it without the accommodations that I
3 needed, and I failed.

4 And then I was currently in a fourth year rotation when I
5 found out that I failed, and so I was allowed to finish that
6 rotation, but then the school had me drop everything after that
7 until I was able to receive accommodations and take the Step
8 again. And in the process, I was -- the school had me go on
9 leave of absence. And I've had to extend the leave of absence
10 and this process. And I'm still on leave.

11 Q. So did you receive accommodations in medical school?

12 A. Yes.

13 Q. What accommodations did you receive?

14 A. Mostly double time on tests and a separate room to take
15 them in. And for the tests that were written by my school, as
16 opposed to like the NBME, I had those tests on paper instead of
17 on the computer so that I could use like my markers and
18 highlighters and stuff to like help me read and annotate as I
19 go.

20 THE COURT: Excuse us for a moment.

21 (A discussion off the record occurred.)

22 THE WITNESS: And I also had a water bottle and my
23 meds and like a granola bar in the room, but out of sight, so
24 that if the test were -- when I needed to take a medication,
25 then I was able to do that quickly and not distract for too

1 long from the test.

2 And I also had -- for the clinical exams that we had
3 with standardized patients, which are called OSCEs, which is
4 O-S-C-E, I think. And for that I had -- initially I started
5 with time-and-a-half for the note writing portion, but I wasn't
6 able to write all that I had done in the encounter in the note
7 in that time. And I was still struggling to read the prompt
8 for the encounter going in. So my school -- I had requested
9 from my school the double time like I had been receiving on my
10 other exams and for the note writing portion. And a few extra
11 minutes at the beginning to make sure I was able to read the
12 prompt and the instructions before going into the room. And
13 they granted that. So I had that for the -- all of -- I
14 believe all of the third-year OSCEs.

15 BY MS. VARGAS:

16 Q. Did you have any other accommodations in medical school?

17 A. Yeah. When -- at the beginning of the year, I was really
18 struggling -- beginning of the first year, sorry, I was really
19 struggling to like keep up with reading and really get to most
20 of the reading. And my school ended up providing the Kurzweil
21 software, which is it reads like PDFs and stuff to me. And it
22 highlights the words as it reads them so I can follow along.
23 So they provided that software, which I use for most reading
24 that's longer than like a line.

25 Q. So what kind of reading did you use the Kurzweil speech

1 reading software for?

2 A. Pretty much anything that I had to read, whether it was
3 like assigned reading from textbooks or maybe research articles
4 or even if I had to look something up online and it was like a
5 couple paragraphs, sometimes emails, if they're long. Pretty
6 much everything.

7 Q. You mentioned that you take medication.

8 What kind of medication do you take?

9 A. I take a few. I have Vyvanse, which is like Adderall but
10 it's longer acting.

11 Q. So what is the Adderall for?

12 A. My ADHD.

13 Q. Okay.

14 A. And it helps me like focus throughout the day. And if I
15 do get distracted, it helps me kind of realize that and bring
16 myself back to what I was supposed to be focusing on. And like
17 if I need to read, which takes a lot of mental effort, it helps
18 me to focus on what I need to do to read. And then it helps me
19 to sit still and not be too fidgety throughout the day.

20 Q. What other medications do you take?

21 A. I take Buspar, which is in the morning and in the evening.
22 And that's for anxiety that started like after I was denied
23 accommodations the first time. And then metoprolol, which I
24 take in the evening, which is for migraine prevention, like
25 prophylaxis. And then I take an aspirin every other day for a

1 blood thinner.

2 Q. Why do you take aspirin, blood thinners?

3 A. Because I had a DVT when I was in my -- the end of my
4 second year of med school and later found out I had a clotting
5 disorder. And I was on Xarelto, which was another blood
6 thinner, for two years. And when I was taken off of that, I
7 was advised to take aspirin to kind of maintain a blood
8 thinner.

9 Q. You testified a moment ago that you used the Kurzweil to
10 read to you your medical school work.

11 Was there reading that you did yourself?

12 A. Can you clarify what you mean by that?

13 Q. Where you weren't able to use the speech reading
14 software --

15 A. Uh-huh.

16 Q. -- how do you read?

17 A. You mean like if it's in a book?

18 Q. Yeah.

19 A. I -- it's like a long process. I have to decode
20 everything and take each word one at a time and figure out what
21 the word is and what it means and then build that up into like
22 the sentence and try to figure out what the sentence means, and
23 then build that up with like each sentence and figure out what
24 the paragraph means. And hopefully by that time I still
25 remember what it all meant. And then I can put it together and

1 process it. And generally when I do that, I need to like write
2 on the text itself. And I use a lot of colors, which have
3 specific meanings to me, and I draw pictures and I -- like
4 pretty much it looks like a mess to other people, but it all
5 has meaning to me. But that's how I decipher what's on the
6 page and make it -- translate it into something that I can
7 understand.

8 Q. Can you explain what you mean by using colors?

9 A. Yeah. I have a lot of like markers and highlighters and
10 stuff that I use, and I have them, but they -- I don't know.
11 It's a system, and I have different colors for different
12 meanings. And as I read, I -- it would be hard to describe
13 without showing, but...

14 Q. You have your markers with you?

15 A. Yeah.

16 MS. VARGAS: Your Honor, would it be okay to let the
17 witness explain using her markers?

18 THE COURT: Sure. We'll allow it.

19 Just out of some curiosity, were you precluded from
20 using these markers in that earlier test that you say you
21 failed?

22 THE WITNESS: What is precluded?

23 THE COURT: Pardon?

24 THE WITNESS: What does precluded mean?

25 THE COURT: Not allowed.

1 THE WITNESS: No, I was not allowed to.

2 THE COURT: You were not allowed to do that?

3 THE WITNESS: No, Your Honor.

4 THE COURT: Very well.

5 THE WITNESS: Do you want me to get them?

6 MS. VARGAS: Yes, please, if that's all right?

7 THE COURT: Sure.

8 THE WITNESS: Thank you.

9 I'll try to hold them up so you can see.

10 BY MS. VARGAS:

11 Q. What are these?

12 A. These are my markers and pens and pencils and -- sorry.

13 And I pretty much always have them with me because if I have to
14 read, it helps.

15 Q. How do you use them?

16 A. Let me get them out.

17 Okay. I'll hold them up so you can see.

18 So I have colored pencils, because I hate writing with pen
19 because it's permanent and I make a ton of mistakes, so I also
20 always have erasers. But I have a color system. And each
21 color means something.

22 So red is like diseases or disorders or typically down
23 arrows, because I can't distinguish arrows just looking at
24 them, or like distinguish the direction. And so making it a
25 color when I'm looking at it once I've figured out what it is

1 helps me to see it when I'm looking at it with the rest of the
2 text.

3 So the opposite then is green, which is up arrows and
4 pretty much any like treatment or management of a disease, so
5 like drug names or if a specific therapy is recommended, like
6 physical therapy.

7 And then blue -- sorry, that's not blue but this is blue.

8 Okay. So blue is like diagnostic tests like labs or chest
9 x-rays or biopsies and the findings that you would find on
10 those.

11 And light blue is like physical findings like on a
12 physical exam or symptoms like shortness of breath or like if
13 you have a rash and what the rash looks like.

14 And then orange is like chemicals or like mechanisms of
15 actions, mechanism of actions for drugs or like how they work
16 or like a disease process, like if there's a specific enzyme
17 that's not functioning or something, that's orange.

18 And then purple is -- oh, sorry. Purple is like
19 histology, which is like what cells look like under a
20 microscope. And then it's like if there's a specific cell line
21 that's they're talking about, like skin cells or something,
22 then that's histology, and so that's purple.

23 And then, sorry, this teal color is genetics. And so
24 anything that has to do with genes, so like a gene that's
25 mutated or like mode of inheritance or like just -- I guess a

1 gene that's not functioning or the gene that's mutated that --
2 I will use that color.

3 And then yellow is for like risk factors or like if a
4 disease is particular to like women over men or in children
5 versus adults or smokers versus nonsmokers, things that really
6 stick out or is like a key finding or things that are like
7 super important or like specific to that disease, then that's
8 yellow because that stands out.

9 Gray is protozoa.

10 This yellow is also -- specifically this one, not any
11 other yellow, is fungi or yeast.

12 Brown is bacteria. And again, specifically this brown.

13 And this one is like a tan -- orangish-tan. And that one
14 is viruses.

15 And I think pink is negative symptoms, so like things that
16 are like an infection or like if you have hemorrhaging or
17 something that is a side effect of something else but it has a
18 negative effect on the person and that's not just something
19 benign like headache or swelling or something, then that would
20 be pink.

21 And then I always carry Wite-Out because I -- when I write
22 in pen or in marker and make the mistakes that I do, I need to
23 fix them a lot, and so I have Wite-Out.

24 And I always -- or pretty much always have these with me
25 to read.

1 Q. Is this something -- have you seen other medical students
2 do this?

3 A. No.

4 Q. Why do you do this?

5 A. Because I need to. Otherwise, the -- it doesn't -- the
6 reading that I have to do doesn't really make sense to me
7 without being able to use a system to give it meaning.

8 Q. So after you put these colors on it, how does that help
9 you?

10 A. So it's kind of like when you're learning another language
11 and you have to translate what the words mean and you probably
12 write it out or do whatever notes you would do to remember what
13 you're learning, I have to do that with pictures and colors.
14 And I have to translate whatever the chunk of text is on the
15 page to something that I can see and recognize and know what it
16 means.

17 And so if you ask me, you know, what is the name of this
18 enzyme and you just hand me a page and I don't -- I can't -- I
19 couldn't find it if I tried, if my life depended on it. But if
20 it -- unless it was already like visually standing out, and
21 then I might see it.

22 And for me, if you just hand me a chunk of text, nothing
23 stands out. So I have to go through piece by piece and give
24 each word or each important word, so something like not "the,"
25 give it meaning. And then I can look at it and know where that

1 thing is and what it means, so if someone is like what is this
2 enzyme and I see the orange on the page, there's the enzyme and
3 I can tell you what that is. Or if they say what diagnostic
4 test was used, then I can see where it's blue. And I can say
5 they used a chest x-ray and these were the findings.

6 Q. When did you first start using this system?

7 A. This one specifically, med school. But I developed using
8 colors over time. And I think I've pretty much almost always,
9 from what I can remember, in school used colors to mean -- to
10 mean something for whatever I was studying.

11 Q. So talking about school, what was elementary school like
12 for you?

13 A. Well, I've always really liked learning. I like to learn
14 things and to problem solve. But the -- reading in
15 particularly has always been hard. Spelling has been very much
16 not my best subject. And writing has been extremely difficult
17 for me, because in order to write, you also have to read and
18 spell what you're writing. And I've always struggled with
19 that.

20 And so, you know, as you're learning that when you grow
21 up, it's like you want to do well, because I liked learning, I
22 wanted to impress my teachers, do well in school, impress my
23 parents, and also just for my own knowledge, but it was really
24 difficult. And I struggled. And so it was embarrassing.

25 Q. Did anyone else know that you struggled in school?

1 A. Sorry. Can I get some Kleenex?

2 THE COURT: There's some tissues right behind you.

3 THE WITNESS: Can you repeat the question, please?

4 BY MS. VARGAS:

5 Q. Did anyone else know that you struggled in school?

6 A. Yeah. My teachers helped me a lot, and I think they did
7 that because they recognized that I was having a lot of
8 difficulty with like learning to read and with switching my
9 letters around. And so they tried to help me because they knew
10 that I wanted to do it right and I wanted to learn. And so
11 they took the time to make sure that I could, like, do the best
12 I can to learn it.

13 Q. What kind of things did your teachers do to help you?

14 A. First, they spent a lot of extra time with me, but they
15 would -- specifically like I remember my first grade teacher
16 would put me like at the time-out desk, which was also really
17 embarrassing, because no one wants to be at the time-out desk.
18 But it would separate me from my class. And she would do that
19 for like assignments or tests or quizzes, especially like
20 reading or -- like reading, class reading or like writing
21 assignments or spelling tests. And she would do that so I
22 wasn't distracted by everyone else and so that I would try to
23 focus on my work.

24 And then because I really struggled with like the
25 reversals, switching my letters around and like writing the

1 wrong letter because it looked like another letter or writing
2 it backwards, they gave me an alphabet chart so that I could
3 make sure that the letter I was writing was the same as the
4 letter that I wanted to be writing.

5 So I would have to like -- say if I was trying to spell
6 boat, I would know that, okay, the sound is B, so I would have
7 to go AB and then figure out, okay, that's a B. I need to
8 write that one.

9 It would like -- if I had a spelling test, they would
10 reread -- after they read the words for everybody, they would
11 come over to just my desk and read them for me and give me the
12 time between each one to figure out what I wanted to put down.
13 And then reread the word and read it slowly and spend that
14 extra time doing that for me.

15 And like a lot of times if I wasn't getting something,
16 they would keep me in at recess and work with me over recess.

17 And -- or if I couldn't finish an assignment, they would
18 have me finish it over recess because I didn't have enough time
19 during class.

20 Q. Did anyone ever raise concern in elementary school about
21 your reading?

22 A. Yeah. I mean, I don't know exactly how many, but I know
23 my first grade teacher, the one who started giving me the
24 alphabet chart and putting me at the time-out desk, I know that
25 she told my mom that I was having trouble with reversing

1 letters and I was a slow reader and recommended that I get that
2 checked out. And so I was referred to Dr. Tanguay, who was the
3 optometrist or ophthalmologist. I'm not sure what her title
4 is.

5 Q. What did you do with Dr. Tanguay?

6 A. She gave me some tests, like I think it's called visual
7 perception testing. And it had like these pictures, like where
8 one -- the column on the left was like a reference. And then I
9 would have to find which one looked -- which one was the same.
10 And I had to do that over and over for all these different
11 pictures.

12 And then she said something, I did have a problem with
13 something. And -- with like discriminating between shapes, I
14 think. And then she recommended that I have like more therapy
15 with her for that. And so we did that for a while. Like a
16 couple years, I think.

17 Q. Did she recommend any other treatment?

18 A. She gave glasses, but they didn't help, so I didn't really
19 wear them like after I realized they didn't really help.

20 And then like since then, I've gotten my vision testing.
21 And I have like 20/13 vision, so it's fine.

22 Q. Did you receive extra time on tests in elementary school?

23 A. Yeah. I definitely pretty much was always given the time
24 I needed to complete tests or assignments.

25 I think, again, especially because my teachers knew that I

1 wanted to do it and I was working really hard to do it, I
2 wasn't just slacking off or goofing off or, you know, causing
3 trouble, that they saw that I wanted to do it and I wanted to
4 do it right, and so they gave me the time that I needed to work
5 through it and do it. And so, I mean, as early as we started
6 having assignments is when I started being given like extra
7 time to do those things.

8 Q. How were your grades in elementary school?

9 A. I mean, I don't remember specifically, but I know that
10 they were As and Bs.

11 Q. And did you have any kind of formal IEP or 504 plan?

12 A. No, not that I'm aware of.

13 Q. And how did you do -- as elementary school went on, how
14 did you do in fourth, fifth grade?

15 A. Well, fourth grade specifically was like a really hard
16 year for me because we had to do a lot more writing. Instead
17 of just writing maybe like a paragraph on a page, we were
18 supposed to write papers with like the intro and the body
19 paragraphs and the conclusion. And we had to write a lot of
20 them. And we were supposed to like proofread our own stuff and
21 have multiple drafts.

22 And this was all new, and it was a lot. And I was still
23 struggling just to write and read in general, and so that added
24 a lot of -- added like stress and hard work for me. And I --
25 my teacher was also really strict. And she was the language

1 arts teacher in that grade. And we had multiple teachers, like
2 for each class.

3 And so my I guess homeroom teacher was the language arts
4 teacher, and she was really strict and expected a lot from us.

5 And I would always be turning stuff in late or forgetting
6 assignments or forgetting to bring it home, even if I
7 remembered that I had the assignment, like when I got home.
8 And so she would get mad at me in class. Or if I was talking
9 and not paying attention, she would kind of be like Jessie, get
10 back to work. And it would stress me out because I didn't want
11 to be disrespectful and I didn't want to be getting in trouble.
12 So I would frequently come home in tears, upset and telling my
13 mom like, this is so hard, like I need help.

14 And I know my mom went in and talked to her a lot. And
15 she ended up working with me a lot to get better and tried to
16 help me set up ways to remind myself to do things. Or she
17 would remind me or have my mom remind me. Or she would help me
18 to make it so that I could be successful, even though I was
19 still struggling with all of these things.

20 Q. What kind of things did your mother do to help you?

21 A. Everything. My mom, like, spent hours working with me on
22 everything, from which direction letters are supposed to face
23 to spelling to writing. She would edit everything that I
24 wrote, spellcheck it, proofread it, make sure punctuation was
25 where it was supposed to be. If I needed help with math,

1 because they assigned like story problems which were hard for
2 me because I couldn't figure out what the question was asking,
3 but I could do the math, she would read the question to me and
4 help me figure out what it was asking so that I could actually
5 do my homework.

6 And my dad would do that too. And they would make me
7 write my spelling words over and over, like ten times every
8 night. Like if they were assigned at the beginning of the week
9 and my test was Friday, every night they would sit there and
10 just have me do it again. And they would do like mock spelling
11 tests. And then if I got something wrong, they would do it
12 again.

13 Yeah. And like a lot of times, I guess it's probably
14 started either late elementary or early middle school. But I
15 would end up having to pull like all-nighters or be up late
16 working on papers or reading because I couldn't finish it in
17 like a reasonable amount of time.

18 And so my mom would -- like if it was reading, she would
19 let me do as much as I could, and then she would read the rest
20 to me out loud or like talk me through it and help me process
21 what I was reading.

22 When I was struggling with writing papers, she would help
23 me like organize my thoughts and put my thoughts in words so
24 that it made sense on paper.

25 Yeah. She did like a lot for me.

1 Q. When you were in fifth grade, did you have any kind of
2 special testing?

3 A. Are you referring to the ACE program?

4 Q. What is the ACE program?

5 A. I forget what it stands for, and I think in the deposition
6 Mr. Burgoyne said it was something creative. I don't remember
7 what the A and E stood for.

8 Q. What was the test for?

9 A. For math. I had to -- when I was in Texas, I was in the
10 ACE program for math, which was -- I thought was an accelerated
11 math, but I wouldn't be able to tell. I don't know the
12 curriculum from regular math.

13 So when we moved to Michigan in the middle of fifth grade,
14 they didn't accept that to start their accelerated math
15 program, and so they had me take a test with anybody else who
16 wanted to start that in sixth grade.

17 And was your question, what was the test?

18 Q. Yeah. So how did you do on that test?

19 A. Well, it was a test -- I think it was 60 questions, and I
20 don't know how long they gave us, but --

21 Q. Did they give you extra time on that test?

22 A. No.

23 Q. So what happened?

24 A. So we were supposed to complete 30 -- or get 30 right in
25 order to be able to go into their math program in sixth grade.

1 And I ran out of time on the test, but I got through 29 of the
2 questions. And I was really confident that I knew what I was
3 doing and I knew the answers. And I had started the 30th one
4 when the time ran out, so I was really upset because I knew
5 that was what was needed to be able to go forward. And so when
6 I got home that day, I was upset and I told my mom. And she
7 went in and met with the principal to see if I could, like,
8 finish that question or if they could give partial credit and
9 see if the work for that one was right, like if they graded the
10 first 29 and I got those right, if they could grade the work
11 for the 30th. And it turned out that I did get the 29 right,
12 so they did grade the work that I had and said that it was on
13 the right track to get the right answer, and so they let me
14 into the program.

15 Q. How did your workload -- say, when you got into high
16 school, how did your workload compare to your peers, your
17 friends?

18 A. I don't know specifically, because we never really talked
19 about like how long we were spending each night, but I know
20 that my friends were like hanging out and doing other things,
21 and I really didn't get the chance to during the school year.
22 I was pretty much only able to hang out with people during the
23 summer and maybe once or twice on weekends. But they were all
24 hanging out, and they were frustrated with me because I was
25 never able to hang out. And I was always doing homework. I did

1 play sports, but I wasn't like -- you know, once I got home
2 from the sport I was always doing homework. And I was up until
3 like 3:00 in the morning usually with my mom sitting there at
4 the kitchen table, like helping me or making me focus. And
5 then I would get up and do it again.

6 And so I didn't have the time that they did. And I know
7 they were always frustrated with me for that. And I just
8 didn't understand how they had so much time when I, like, was
9 always doing homework.

10 Q. And then you went to college.

11 What happened when you went to college?

12 A. There was a lot more reading. And couldn't really, like,
13 manage it. I didn't have enough time in the day to keep up
14 with the reading and, like, organizing everything and keeping
15 track of everything. And I was making a lot of mistakes. And
16 so I pretty much felt like I was drowning, like I was trying so
17 hard to swim but I like couldn't keep up with everything.

18 And then I was -- I don't know. I was really frustrated.
19 So I was talking to my teachers about like what could I do to
20 be better, did they have any suggestions.

21 And I remember like my Spanish teacher was the first one
22 who said something, but -- and I had been really good at
23 Spanish in high school because I had pretty much been taking
24 Spanish lessons since I was little, like 3. And I lived in
25 Texas and it's spoken there a lot. And so I was around it a

1 lot. And I had gotten really good at it through high school.
2 And college, the Spanish class, there was like an oral
3 component. So we had to like take an oral test where we would
4 speak conversationally with the professor and then there was
5 the written part. And I would do really great on the oral part
6 and she knew I knew my stuff, but then I would always get
7 marked off for like stupid things like writing the letters in
8 the wrong order or spelling it wrong or, like, not putting the
9 words in the right order and -- on the written test.

10 And I was so frustrated because I knew the stuff. And so
11 I asked her, like, what else can I do, do you recommend
12 anything? And she was like, no, I can't -- I can't do anything
13 for you. And I was like, can you -- I mean, you know that I
14 know this, can you not grade the spelling if I'm close. And
15 she said, I can't do that unless you have like a diagnosis or
16 something. And you would have to go to ODS to do that.

17 Q. What is ODS?

18 A. Office of Disability Services.

19 And I kind of thought of that, but I didn't necessarily do
20 anything about it. I was still just frustrated, but it made me
21 not enjoy Spanish anymore, which is sad.

22 So then the second teacher that kind of, like, said
23 something was my organic chemistry professor. And he knew me
24 really well. And this was in I think -- maybe later, the last
25 chemistry.

1 And I was working really hard. And I liked organic
2 chemistry because it was visual and it wasn't like a lot of
3 like reading and writing, it was like putting things together
4 like molecules together and figuring out like how they would
5 fit together, which was easy for me. But the tests were really
6 long, and I wouldn't -- I would get like halfway through the
7 tests or partway through the tests and I wouldn't even get to
8 the other questions. And I thought I was maybe just struggling
9 to understand the material or process it or something. And so
10 I asked my teacher, like, what -- do I need a tutor or
11 something, like what can I do to be better and do this better.

12 And he looked at my test, and he flipped through it and
13 said, well, a tutor is not going to help you because you know
14 all of this. Everything in here is right, but the second half
15 of this is blank, like you didn't even get there, so I think
16 you just need more time. And I think you should go and talk to
17 ODS.

18 And I really liked this teacher and I trusted him. And so
19 when he said that, I -- since it was the second time I had been
20 told this, I thought maybe I need to. And so I went into set
21 up an appointment with ODS. And they assigned me an advisor.
22 And she talked to me about like what my struggles were. And
23 she said she thought I needed to be evaluated and that they
24 would give me temporary accommodations while that was
25 happening.

1 Q. So did you have that evaluation?

2 A. I went in to see my primary care provider, who at the time
3 was Dr. Smiy.

4 And I told him about like my struggles and that I was
5 concerned with actually dyslexia, because I was switching my
6 letters around still and I was having such a hard time with
7 like reading and pretty much all the struggles I've had this
8 whole time. But that for some reason now it was so much harder
9 to, like, fix it before it was noticed by someone else. And I
10 saw I was missing a lot of points on tests and stuff.

11 And he started asking me other questions and ended up
12 diagnosing me with ADD at the time, which is ADHD now. And he
13 said, you probably are dyslexic, but I can't diagnose that
14 myself. You would need testing. I can't do the testing
15 because that's really expensive and it takes a long time, and I
16 know that you need to like -- we need to do something about
17 this now. And what I can do is try to treat the ADHD
18 medically. And having the improved focus may help you a little
19 bit with the reading and improve your focus and -- on what you
20 need to do to read.

21 And so he trialed me on Ritalin. And then over time we
22 switched that to Adderall, but we like adjusted the dose to
23 maximize the -- how much it helped.

24 And he said that, you know, the accommodations that would
25 be needed for dyslexia are probably the same accommodations

1 that you'll get for ADHD or ADD. And so, you know, I don't
2 think that you need the testing because that should be adequate
3 for what you need. And if it's not, just come back to me and
4 I'll refer you for testing.

5 Q. So what did you do next?

6 A. Well, the ODS had him fill out a form, and then they
7 evaluated the form. And also when they met with me and they --
8 and looked at some of the tests, I think that I maybe brought
9 in to show them what mistakes I was making. And then they gave
10 me the additional time and tests in a separate room, and they
11 let me have tests on paper instead of on the computer. And
12 they let me use like markers and stuff. I think I got priority
13 scheduling. And I had access to the ODS counselor.

14 Q. How much extra time did they give you?

15 A. Time-and-a-half.

16 Q. And then what did you do after college?

17 A. I applied for medical school and didn't get in the first
18 time. So then I tried to do some things to like build up my
19 resume, my application. And I was still interested in autism,
20 so I did some research, genetic research in autism. First I
21 was a volunteer, but then I ended up getting paid for it later
22 on, towards the end. And then I always worked at a bar in town
23 because I wasn't getting paid for most of the time. And then I
24 danced with a local modern dance company. And then I reapplied
25 for med school.

1 Q. Did you take the MCAT?

2 A. Yes.

3 Q. Did you have accommodations for the MCAT?

4 A. No.

5 Q. Why not?

6 A. By the time that I was diagnosed, it was right before my
7 test was scheduled, my MCAT was scheduled. And I didn't know
8 that they even offered accommodations until someone said
9 something to me about it. And I sent an email to -- I looked
10 it up once I heard that it was a thing. And I -- it said that
11 there were these requirements for documentation that you had to
12 submit in order to request accommodation. And one of them was
13 an evaluation by a -- like a licensed evaluator or something.
14 And I wasn't sure if Dr. Smiy's evaluation counted, so I
15 emailed them to ask. And they responded kind of generically,
16 like please see our guidelines, and they didn't really offer
17 any advice as to whether or not his evaluation would be
18 adequate.

19 And so then I met with my ODS advisor to see if she
20 thought that it was adequate. And she said, in our experience,
21 no, that's not going to be adequate. They want to see like a
22 neuropsych evaluation, which your primary care doctor didn't
23 refer you to do.

24 And she also recommended that I not apply for
25 accommodations, because at that time they were flagged. So

1 like if I -- when I got my score report or when the schools
2 that I applied to received my score report, it would say that I
3 received accommodations and that it would probably, like,
4 negatively impact my application regardless of how I did on the
5 test.

6 Q. How did you do on the test, on the MCAT?

7 A. I got a 30M.

8 Q. On which section did you get a 30M?

9 A. That's all of them. That's the score. 30 is the
10 cumulative score and the M is the writing score.

11 Q. Okay. So did you get scores for different parts of the
12 test or was there only one score?

13 A. There were subscores for each section. And like there's
14 physical sciences and then verbal reasoning and biological
15 sciences. And then a writing section, which was like two
16 passages -- two prompts, and you write two essays.

17 Q. After you took the MCAT, you testified that you did not
18 get into medical school initially?

19 A. No.

20 Q. And then did you reapply?

21 A. Yes.

22 Q. And what happened the second time?

23 A. I initially was waitlisted for a couple places. First
24 waitlisted for interviews. And then I got an interview at my
25 school, like Ohio State. And then later got an interview at

1 Western Michigan University, their school. And then I was
2 waitlisted for both after my interview.

3 And in I think May, I got accepted to Western Michigan
4 University and then much later in the summer I got rejected
5 from OSU. And I guess my only option -- I could go to Western
6 Michigan, which I did, or not go. And obviously, I went.

7 Q. So what is the USMLE?

8 A. It's a testing agency for med schools. I think the MD
9 degree, not the DO degree. And they write the Step exams.

10 Q. How many parts of this exam are there?

11 A. There's Step 1, Step 2 clinical knowledge, Step 2 clinical
12 skills and Step 3. But Step 3 is taken during residency.

13 Q. So when do you have to take -- when in your medical school
14 education do you take Step 1?

15 A. I think it varies by school, and it also varied in my
16 school, because my school was new, like brand new. And so our
17 class had to take it after third year, but the class after us
18 took it sometime in the middle of third year. And the class
19 after them took it at a different time. So it changes. But I
20 think right now their policy -- my school's policy is that you
21 are supposed to take it before you start -- you're supposed to
22 pass it before you start fourth year.

23 Q. What happens if you don't pass it before you start fourth
24 year?

25 A. You either have to go on leave or you don't start fourth

1 year until you do pass it.

2 Q. Are you allowed to take the test as many times as you
3 want?

4 A. No.

5 Q. What are the limits on taking the test?

6 A. Our school only allows a student to take it three times
7 before they're dismissed from the school if they don't pass it.
8 But I think that the NBME or the USMLE only allows six.

9 Q. How are the scores used in terms of getting residency?

10 A. So the Step 1 score is usually the most heavily weighted
11 or the most commonly used factor to evaluate, at least
12 initially. So when you submit your application for residency,
13 a lot of times the first thing they look at is your Step
14 1 score, and whether or not you passed it but also was your
15 score competitive. And by competitive it needs to be like
16 higher, in the higher range for whatever field you're applying
17 for. And if you have a failed attempt, then that is a big red
18 flag usually for most programs. And so if they have a -- if
19 you have a failed attempt, you know, they may give you a chance
20 and ask you what happened, or they just may not look at the
21 rest of your application.

22 Q. So when did you -- when were you supposed to take the Step
23 1 of the USMLE?

24 A. I was supposed to take it after my -- completing my third
25 year. And we were allowed to take it after starting fourth

1 year, as long as like we passed it before I think they gave us
2 like September 9th is when our school wanted us to pass it by.

3 Q. Is there any preparation that you do as part of your
4 medical school education to be prepared to take the Step 1?

5 A. Pretty much all of med school, like the first two years in
6 particular are the basic sciences. And then the third year is
7 like the clinical sciences so you take clinical rotations but
8 we're also still learning the basic sciences to -- like
9 integrated and medicine. And --

10 What was the question? I'm sorry.

11 Q. Let me ask you this: What is the shelf exam?

12 A. A shelf exam is an exam that's specific for the
13 rotation -- the clinical rotation you're on. So like there's
14 an internal medicine exam and there's like a family medicine.
15 That would be pediatrics, psych and surgery. And they're
16 written by the NBME to test that. So they're standardized
17 across all medical schools.

18 Q. Did you have accommodations on those shelf exams?

19 A. Yes.

20 Q. What accommodations did you have?

21 A. I had double testing time, a separate room and I think --
22 oh, and they let me use colored dry erase markers on a
23 laminated -- not on a laminated -- on a laminated sheet they
24 give to everybody but usually everybody just has a black
25 marker.

1 Q. How did you do on those shelf exams?

2 A. It varied by the content, like the type of course. The
3 first one that I had was internal medicine, which is known to
4 be a pretty hard exam. It covers a lot of material, and it's
5 pretty intricate, like, medicine-wise.

6 And because it was my first clinical rotation and we
7 didn't have a class ahead of us to like give us pointers or
8 anything, I was kind of just thrown into a new context I had
9 never really been in before. And so I wasn't able to get to a
10 lot of material during the course, like the reading that was
11 assigned, but I learned a lot in clinic. And so I didn't score
12 as well as probably other ones, but I passed. And like I think
13 my OB and my peds I did -- and psych I did really well on
14 because I was able to get to the material during the course and
15 I was able to show that I knew that.

16 But on the OB one, I -- we also have OSCEs that go with
17 the shelf exams in order to pass the course. And that's a
18 clinical test. So we have a standardized patient, and we go in
19 and see this patient. And then we have to write a note that --
20 it's like the history is a paragraph and the physical findings
21 are a paragraph. And then you list your differential
22 diagnosis, so what you think it could be. And then you also
23 have to list the support for each diagnosis, and you're
24 supposed to list -- so there's three -- like you can put three
25 differential diagnoses. You can put more but I never got that

1 far. And then you are supposed to put at least three support,
2 whether it's historical findings or physical findings, for each
3 diagnosis that you put. And then there's a line for any
4 diagnostic tests that you want to order.

5 And -- so it's a lot of writing. And so even if I got all
6 the information in the clinical encounter, I usually didn't
7 have enough time on the OSCE to like get my thoughts out and
8 organize it and put it in the framework. And when I type, I
9 still mess things up. So I spent a lot of time trying to make
10 sure I had the right words, like it said what I was trying to
11 say.

12 And so usually I would run out of time. And on that one,
13 the OB one, I learned that if you put diagnoses in the
14 diagnostic part -- the diagnosis part but you don't put the
15 support that you have in that support part also in the
16 paragraphs, it doesn't count. And so I failed that OSCE.

17 And then I also failed a neuro OSCE twice because I hadn't
18 gotten to the reading that the OSCE was based off of.

19 And so my clerkship director after I failed the first one
20 met with me and said you did a phenomenal job on the patient
21 encounter, you asked all the right questions. I think you're a
22 like little too specific in your -- what you think it might be
23 and maybe like make it broader, but I can't give you much more
24 because it would give it away.

25 And so I tried again. The same thing happened. And she

1 was like, I'm sorry, you failed this again. Why don't you take
2 a look at this reading specifically and then, you know, come
3 back in a week and we'll try again.

4 And so after I had been pointed to a specific reading and
5 I had the time to like have it read to me with my computer,
6 then I passed.

7 Q. You said that you didn't get to the reading initially.

8 Why was that?

9 A. There's just too much reading and we were in clinic a lot
10 or like our clinical hours were -- like we had long days. And
11 so at the end I would do as much reading or studying as I could
12 get to without compromising like my health, because I needed to
13 sleep in order to take care of patients. I didn't want to
14 compromise my decision-making ability, like when I'm taking
15 care of other patients. So I would do as much reading as I
16 could each night, and if I had like a lunch break during the
17 day, but I just didn't get to all of the reading.

18 And like in the clinic, if I don't have my computer, I
19 don't have access to the software that I use to read to me, so
20 it's like I am stuck trying to use this method, which, you
21 know, doesn't really work if you only have like ten minutes to
22 read in between cases or something. So I didn't get to a lot
23 of the reading assignments. And that was one that I didn't get
24 to.

25 Q. So you testified earlier that you applied for

1 accommodations for Step 1 of the USMLE.

2 Can you tell me how you did that?

3 A. Sorry, can you repeat that?

4 Q. You testified that you applied for accommodations to take
5 Step 1.

6 What did you do to apply for accommodations?

7 A. So I -- there's like an application that they -- form that
8 they have online. And I printed that out, and I had the
9 guidelines that they publish. And I filled that out, and
10 there's also a form that the school has to fill out that
11 certifies that I received accommodations there. And --

12 Q. We can actually take a moment, Your Honor. We have
13 binders, and I don't think that we've given them yet, with the
14 exhibits prepared.

15 THE COURT: Sure.

16 MS. VARGAS: Shall we provide that to you?

17 THE COURT: Yeah. You can leave a copy here and make
18 sure your witness has a copy so that she can identify the
19 exhibits. Let's move along.

20 MS. VARGAS: May I approach?

21 THE COURT: Give it to your witness first. I can get
22 it later. Watch yourself. Don't hurt yourself.

23 MS. VARGAS: On the clerk's bench?

24 THE COURT: That would be fine. Thank you.

25 Are we going to need our markers or pencils

1 or anything like that?

2 MS. VARGAS: No. We can put those away.

3 THE COURT: Very good.

4 THE WITNESS: Sorry.

5 BY MS. VARGAS:

6 Q. So the book of documents in front of you is open to the
7 document that I'd like you to look at.

8 Do you know what that document is?

9 A. I think that was an email I sent to the USMLE or NBME
10 disability services asking about like what I would need to do
11 to apply for accommodations.

12 THE COURT: What exhibit number is that?

13 THE WITNESS: 1?

14 THE COURT: Very good. Continue, Counsel.

15 BY MS. VARGAS:

16 Q. So this is Exhibit 1 in the binder.

17 If you could look through that first exhibit and let us
18 know if you know what the entirety of the first exhibit is.

19 A. You want me to say what things are as I get to them?

20 Q. Right.

21 A. So after the email is the form that I filled out to submit
22 my request, which is the NBME's form. Sorry, at the top it
23 says USMLE form, but that I submitted for my request.

24 And then the next one is the one my school sent that said
25 what I received at school in terms of accommodations. And

1 there are five, that I received them.

2 Q. So, okay. On page 8 of 83, the numbers are at the very
3 bottom right, what is that document?

4 A. It says it's the USMLE's certification of prior test
5 accommodation.

6 Q. Okay. And then what's the next page?

7 A. That is my personal statement that I submitted with it.

8 Q. Did you write your personal statement?

9 A. Yes, with help.

10 Q. How did you write your personal statement?

11 A. A lot of -- like I would try to write my ideas out,
12 usually like either in a table or a bulleted list. And then my
13 mom would help me expand that and put it in words. And then I
14 would go back through and try to add more to it and make it
15 meet the guidelines that they published. And then my mom would
16 go back and edit it. And we would just go back and forth until
17 it was like cohesive and made sense.

18 Q. How much time did you spend writing this personal
19 statement approximately?

20 A. Probably more than a month, maybe months.

21 Q. Turning to the next document in this exhibit, on page 18
22 of 83.

23 A. Do you want me to identify it?

24 Q. What is that?

25 A. That is the -- my medical school's request for

1 accommodation that I filled out. And then I think the
2 following pages are the supplemental writing -- things that I
3 submitted.

4 Q. Turning to page 32 of 83, you do you recognize that
5 document?

6 A. Yeah.

7 Q. What is that?

8 A. That is Dr. Tanguay's letter from when I was in like first
9 or second grade.

10 Q. What comes after that in this document? What else did you
11 submit?

12 A. There's another letter from her, from like three years
13 later. Page 34 is a physical exam that my primary care
14 provider at the time filled out and -- as part of my med school
15 like entry requirements. Then the following page is Dr. Smiy's
16 notes, records that I had from when I requested accommodations
17 at OSU. And so they -- I sent those because they talked about
18 the ADHD.

19 And then -- do you want me to keep going?

20 Q. If you could just flip through this and let me know if
21 this is all of the information that you provided to the NBME
22 when you first requested accommodations.

23 MS. VARGAS: Your Honor, do we need to have these
24 admitted into evidence?

25 THE COURT: You can move them in at the conclusion of

1 the hearing.

2 MS. VARGAS: Okay.

3 THE COURT: That's if you want them to be considered.

4 That's your call.

5 THE WITNESS: There seems to be mostly everything.

6 And then there's also the email of receipt from the NBME. And

7 they asked for my MCATs score report.

8 BY MS. VARGAS:

9 Q. And did you provide that?

10 A. Yes.

11 MS. VARGAS: I'd like to move to have this admitted

12 into evidence as Exhibit 1.

13 MR. BURGOYNE: We don't have any objection. In the
14 interest of sort of moving more quickly through this two-day
15 hearing, my assumption was we weren't going to go through every
16 document and try to prove it up and get it into evidence, but
17 we haven't had a chance to discuss that with counsel.

18 I don't know if Your Honor has a preference.

19 THE COURT: Very well. I'll grant the admission of
20 this document and you can talk about it during our break and
21 reduce the time process that we're here.

22 MR. BURGOYNE: Thank you, Your Honor.

23 THE COURT: Sure.

24 (Exhibit P-1 admitted.)

25 BY MS. VARGAS:

1 Q. What happened after you submitted this application for
2 accommodations the first time?

3 A. I waited more than the 60 days that they recommend. And
4 then I got denied the accommodations.

5 Q. Did the NBME give you any accommodations at all?

6 A. No.

7 Q. And what did you do?

8 A. Then I talked to my school and asked them what I should
9 do, whether I should try to appeal or reapply or like if they
10 thought I should just take the exam. And everybody that I
11 talked to in the like student affairs or the testing people
12 said that I should take the exam to try to stay on track with
13 my expected graduation.

14 Q. Did you do that?

15 A. I did.

16 Q. And what happened?

17 A. I failed.

18 Q. When did you find out that you failed?

19 A. A month after I took it. And I believe I took it in July
20 of 2017 and found out in August.

21 Q. So then what did you do?

22 A. So then I tried to figure out what my best option to move
23 forward was. And I knew that I needed the accommodations that
24 I had requested to be able to show my knowledge on the exam.
25 And so I tried to find an evaluator who could do the testing

1 like that I thought was needed to show that I did have these
2 disabilities and the need for the accommodations I had
3 requested since the NBME had said that I didn't have the
4 documentation showing this.

5 And I scheduled an appointment with the first available
6 person who had an availability who was willing to do the
7 testing. And that was several months out, I believe in like
8 the fall. And then I had to wait for the actual testing after
9 meeting with them. And then had to wait several months just to
10 get the report from -- it's Dr. Lewandowski who did the
11 evaluation.

12 And then I was also waiting for letters of support from
13 the school, because they had found a document about applying
14 for accommodations and provided that to me. And in there was a
15 description of schools providing a letter of support, so I
16 asked the school to do that. And they did. And so I was
17 waiting for that. And I was waiting for the letter from Dr.
18 Ruekberg and Dr. Houtman to describe why I needed
19 accommodations and what they -- and how they helped.

20 And so once I got all of those pieces in like June, I
21 submitted my second application.

22 Q. Okay. And what did your school do when they found out
23 that you failed Step 1?

24 A. Well, first they made me drop all of the courses I was in.
25 And then because I was the first person to fail Step 1, I was

1 in the first class of -- I was the first. And they didn't
2 really know what to do. And in their policy manual -- well,
3 now it's called the policy manual, but their handbook at the
4 time said that the test should be retaken in three months
5 unless there were extenuating circumstances. And they thought
6 that mine was an extenuating circumstance. And they wanted me
7 to be able to get the accommodations that I need. And so they
8 had me go on a leave of absence, which by the time they figured
9 this out was in March. And so they backdated the leave of
10 absence to August when I found out I failed. And so that they
11 would pause the timeline that requires me to take it in the
12 three months but also the timeline for how long we have to
13 complete our school -- our education.

14 Q. So then when did you submit your second application for
15 accommodations?

16 A. I believe that was June of 2018.

17 Q. And what did you ask the NBME to provide?

18 A. Double testing time and a separate room and extra break
19 time at that time.

20 Q. And what was the purpose of the double time?

21 A. To give me the time that I need to work through and read
22 each question and the answer choices, since I can't read all of
23 the questions in that -- the given time. And also to, like,
24 have time to read aloud and use the compensatory mechanisms
25 that I do use and to move around when I need to and especially

1 like because I have the clotting disorder, to walk when I need
2 to so that I don't increase my risk of having another clot.
3 And to be able to like fidget and read aloud and do the things
4 that may be distracting but also things that I need and not
5 take away time from the exam.

6 And then -- did you only ask about the time?

7 Q. And then what happened with your second request for
8 accommodation to the NBME?

9 A. They approved the room and the -- the separate room and
10 the break time, but they denied the additional testing time.

11 Q. And what were the disabilities that you had listed as
12 needing accommodation when you applied for accommodation to the
13 NBME?

14 A. The first time or the second time?

15 Q. Second time.

16 A. ADHD, dyslexia, migraines with aura, and DVT with
17 postthrombotic syndrome and my clotting disorder.

18 THE COURT: And the first time was it ADHD and
19 dyslexia?

20 THE WITNESS: Yeah, dyslexia and ADHD because I didn't
21 know at that time that I could request accommodations for
22 clotting disorder, DVT and the migraines.

23 BY MS. VARGAS:

24 Q. When do you get migraines?

25 THE COURT: Go ahead. I was going to ask one further

1 question.

2 MS. VARGAS: I'm sorry.

3 THE COURT: In reference to your failing the first
4 test, you failed the first test by 1; is that correct?

5 THE WITNESS: That is correct.

6 THE COURT: You had a what, 160 or 159?

7 THE WITNESS: I had 191, and it needed 192 to pass.

8 THE COURT: And that's without any accommodations at
9 all?

10 THE WITNESS: Yes.

11 THE COURT: Very well. You can continue, Counsel.

12 BY MS. VARGAS:

13 Q. So what happened with your second request for
14 accommodations?

15 A. They approved the room and the break time but not the
16 additional testing time.

17 Q. So what did you do?

18 A. So I -- in their denial letter, they had said that I
19 didn't have sufficient documentation of my -- or objective data
20 of my slow reading, which I figured was something I could
21 provide, so I got additional testing to address that. And so I
22 did that, and I -- I don't remember if I wrote another personal
23 statement or not, but I submitted that. And they denied --
24 they still denied my request.

25 Q. Who provided this new testing?

1 A. Dr. Smith.

2 Q. Where is he employed?

3 A. Michigan Dyslexia Institute.

4 Q. How did the testing that he provided compare to other
5 testing that you received from -- over the years?

6 A. It was different. It actually tested like -- it was
7 reading specific versus testing my head before. It was more
8 like just cognitive ability in general. And so he had me read
9 a lot of -- a lot of just like paragraphs or questions
10 sometimes versus like before the tests were like one word, like
11 can you read this one word, which if it's one word, I can
12 generally like sound it out or if I -- it's something I
13 recognize, I might know it. But it's also not crowded by like
14 being in the middle of a block of text. And usually the prior
15 ones weren't timed, and some of Dr. Smith's were timed. And
16 then he had like different computer based tests for, like --
17 before I had one where you click on the letter X and then it
18 shows you some other stuff in between. And then Dr. Smith's
19 was both like visual and audio, so I had headphones. And they
20 said or showed the number 1 or the number 2, and then I had to
21 click I think for number 1 whether it was said or showed.

22 Q. And what happened after you submitted Dr. Smith's
23 documentation and your -- to the NBME?

24 A. They denied it.

25 Q. And then what did you do?

1 A. And then I filed the complaint. Well, actually, we
2 submitted a letter for reconsideration, and they denied it
3 again. And then we filed a complaint.

4 MS. VARGAS: Your Honor, I have -- all of her
5 applications for accommodations are in this binder. I'd like
6 them to be in evidence, but rather than taking all the time to
7 go through all of them, if counsel doesn't object and Your
8 Honor is amenable, I propose that we just admit to evidence all
9 of the applications for accommodation, which are Exhibit 1, 2,
10 3 and 4.

11 MR. BURGOYNE: I don't have any objection to that,
12 Your Honor.

13 THE COURT: Very well. They're admitted.
14 (Exhibits P-2, P-3 and P-4 admitted.)

15 MS. VARGAS: Thank you, Your Honor.
16 Your Honor, might we take a break?

17 THE COURT: I wanted to go 15 more minutes before we
18 break for lunch. I have a conference call in another case that
19 I have to take at 1:00, and so I'm trying to have a lunch and
20 do business also. Okay?

21 MS. VARGAS: Are you okay for another 15 minutes?

22 THE WITNESS: Yeah.

23 BY MS. VARGAS:

24 Q. If you could turn to Exhibit 19.

25 A. Okay.

1 Q. And then do you recognize what this is?

2 A. I believe it is the MCAT or a version.

3 Q. If you could turn to page 7 of that exhibit. The numbers
4 are on the very bottom right corner of the page.

5 A. Okay.

6 Q. Could you explain how you took the MCAT without
7 accommodations?

8 A. Sure. Do you want me to like walk you through overall, or
9 do you want me to go through a question?

10 Q. Well, look at a question.

11 Why don't you start with the first question.

12 A. Okay.

13 Q. How would you go about answering the first question?

14 A. Is this the same exhibit that the NBME had in their
15 deposition with me?

16 Q. Yes.

17 A. I have notes on that. Can I use those to help me describe
18 it?

19 Q. Would that help you remember how to -- how you answered
20 these questions?

21 A. Yeah.

22 MS. VARGAS: Your Honor, may I show her? And I have a
23 copy for everyone.

24 THE COURT: Yes.

25 MR. BURGOYNE: I've never seen the notes before, Your

1 Honor, so that would be great.

2 MR. BERGER: It's just an annotation.

3 MS. VARGAS: May I approach, Your Honor.

4 THE COURT: Sure. And counsel need not ask permission
5 to approach your witness to give her an exhibit to assist in
6 this testimony.

7 THE WITNESS: Okay. So generally when I go through --

8 BY MS. VARGAS:

9 Q. Can you explain -- go ahead.

10 A. Like if I were going to do the first passage, I would skip
11 ahead to the question, and I would -- there's like a number of
12 questions. And then I would read the last line, but in this
13 case this only has one line, so I would read the line. And I
14 would do it -- if it was something I could answer without
15 reading the passage, I would. If it was something like that I
16 needed maybe numbers to do, so like it's math, which like here
17 I talk about -- and I highlighted it in blue, which means it's
18 a formula, like a math formula. And so I knew that there would
19 be numbers in the passage that I would have to use to solve it.
20 And I don't think my comments that were on here show up, but I
21 had written where on the page went with each number.

22 But I would pretty much look. And it says in the
23 question, based on the passage, the volume of the collected CO2
24 gas at the -- and then I can't see what's there -- was closest
25 to which of the following. And then it gives like one of the

1 variables. And so I would basically look for where it's CO₂
2 gas, and then it says -- I basically would find the numbers
3 there. And then because numbers stand out as opposed to a
4 chunk of words, I would highlight those. And then I would plug
5 them into a formula. And I pretty much didn't read any of the
6 passage.

7 And then I would move on to the next question, and I would
8 read that. And if I knew that without having to read anything,
9 I would answer that.

10 And then in the third question, where there is like a
11 couple lines, I would still start with the last line. And it
12 says, like, compared to the volume and reaction and to the
13 volume in reaction 1 and the volume in reaction 3 would -- and
14 then so I saw where there was three reactions. And so based on
15 that, I would see if I could answer it, which I couldn't. So
16 then I would look to see if I could see where it said something
17 about reaction 2, because that's what it's referencing, like
18 the reference point. And at the bottom of the page, there's
19 like a number 2.

20 So I saw that it was reaction 2, and then I read that
21 reaction 2 was best. And so if it was best, then I would
22 probably guess that the other two were lower U. So --

23 Q. So when you took the MCAT, did you have time to read the
24 entire test?

25 A. No.

1 Q. Do you know if other students had time to read the entire
2 test?

3 A. Yes.

4 MR. BURGOYNE: Objection, Your Honor. I don't think
5 there's any foundation for that testimony.

6 THE COURT: I'm going to sustain the objection.

7 BY MS. VARGAS:

8 Q. Did you take any test prep courses --

9 A. Yes.

10 Q. -- before taking the MCAT?

11 And what test-taking strategies did you use, did you learn
12 in that class?

13 A. I didn't necessarily learn any new ones, but I -- the ones
14 that I pretty much used my whole life to kind of do the minimum
15 reading possible, which was read the question line and then the
16 answer choices and then if needed go back and read something
17 from a passage. That's how they recommended reading it in
18 order to be able to answer the questions that didn't require a
19 lot of reading first and get through as many of those as
20 possible. And then if you have time, go back and do the other
21 ones that required more reading.

22 Q. How many multiple choice options for answers are there on
23 the MCAT, the questions?

24 A. Four.

25 Q. Is that different from Step 1?

1 A. Yeah.

2 Q. How many multiple choice answers are there on Step 1
3 questions?

4 A. It varies. There can be anywhere from four to like
5 whatever J or K is, so like ten or more.

6 Q. Ten or more options to answer?

7 A. On some, yeah.

8 Q. And so did you use other self-mitigation strategies to
9 take the MCAT beyond what you learned in your test-taking prep
10 course?

11 A. I mostly used that -- like the how to answer, not read.
12 So I read the question without reading a lot of the passages.
13 And then because there wasn't like a guessing penalty like
14 there was on the ACT, you know, when it would get to like the
15 five-minute warning at the end, I would just go back and select
16 answers to make sure that all of them were filled so at least I
17 would have a chance of getting credit for some of the ones I
18 couldn't get to. And then with like the remaining five
19 minutes, try to go back and read if I could to maybe get one or
20 two of the answers more.

21 I wasn't allowed to like read aloud or anything. I
22 would -- like on the scrap paper, I think there was a paper for
23 the MCAT, I would like draw things to help me like understand
24 or work through math or anything like that.

25 Q. And those mitigation techniques that you used on the MCAT,

1 were you able to use those on Step 1?

2 A. No, not really.

3 Q. Why not?

4 A. Well, I can't skip reading on Step 1 all of like -- it's
5 set up differently, so it's not just like one long passage and
6 then like six or seven questions. It's like a passage as a
7 question and then the answers. And it's like that for each
8 question, but some questions have videos or pictures or you
9 have to listen to a heart murmur in addition to like a
10 paragraph that you have to analyze. And everything in that
11 paragraph is important. And you have to take that information
12 and like consider all of it in order to be able to answer the
13 question. And so I can't just skip reading on the MCAT -- I'm
14 sorry, the USMLE Step 1.

15 Q. When you took Step 1, what was your strategy? How did you
16 go about taking that test?

17 A. So I mean, I can walk you through it again, but it's kind
18 of the same, like. I would start at the beginning, so we only
19 had like an hour per block. And if I could understand, I would
20 read the last line of the question prompt or whatever, which
21 was the question line generally. And if I understood what it
22 was asking and I could answer it, I would -- like if it was
23 something I knew what it was asking, I would read the answer
24 choices so I knew what to look for in the body of the question,
25 and then I would read the body of the question and highlight

1 the key things related to the answer choices that would help me
2 decide between them. And then I would answer. And because I
3 didn't have a lot of time, I didn't take a lot of time to like,
4 you know, second guess myself and would move on to the next
5 question. And I would do as much as I could. And then if I
6 got to a question that was -- like I couldn't understand or I
7 was confused by the question line, I knew not to spend a lot of
8 time trying to figure that out and I would move on to the next
9 one.

10 If the question body was particularly long, then I would,
11 you know, move on to the next one. And then generally I
12 would -- that would be a first pass of the questions. And that
13 would maybe take like -- I'm not sure. I have notes on that
14 too, of how I went through the test.

15 But I would go back, and I would have like half, around
16 half of the time left and a lot of the questions left. And
17 then I would go back to the ones I hadn't got to, and then they
18 would probably be the longer ones. And I would try to read
19 the -- I would go through it the same way and read the question
20 line. If I understood it, I would read the answers and then
21 try to look for the information in the body paragraph that
22 would help me distinguish between them as I read the body and
23 then answer the question.

24 And because I knew I didn't have a lot of time, I wouldn't
25 spend a lot of time second guessing or anything like that. I

1 would move on to the next one.

2 And then I would get through the second pass. And then if
3 I would maybe have, I don't know, 10, 12 minutes left and have
4 probably 20-some questions left. And -- or like around 20
5 questions left. And then I would take the last 10, 12 minutes
6 to go through the ones that were confusing to me at the
7 beginning and see if this time when I read the question line I
8 understood it. And if so, I would do the same thing and go
9 through and pick an answer. And then when the timer gets to
10 five minutes, it flashes on your screen and it makes you select
11 to -- like it pops up in the middle, and you have to ignore it.

12 And then -- so at five minutes, I knew there were five
13 minutes left. And I would go and put an answer for any that I
14 haven't gotten an answer for or hadn't had the chance to read
15 the whole question. And then I would -- after doing that,
16 would try to go back through to the ones that I hadn't gotten
17 to and still try to read as much as I could and maybe answer
18 one or two.

19 Q. Did you have the time that you needed to show what you
20 knew on Step 1?

21 A. No.

22 Q. If you could turn to Exhibit 20 --

23 THE COURT: We'll take our break now. We'll be in
24 recess until 1:30. All right? And enjoy your lunch today.

25 (Luncheon recess at 12:45 p.m. **until 1:30 p.m.**)

1 THE COURT: You may be seated.

2 Are we ready to proceed?

3 MS. VARGAS: Yes, Your Honor.

4 THE COURT: Ma'am, would you resume the witness stand,
5 please.

6 And I'll remind you, you are still under oath from
7 previously being sworn in. Do you understand that?

8 THE WITNESS: Yes.

9 THE COURT: And this pitcher here is for you along
10 with the water. If you want it down there, that's fine. If
11 not, I'll move it so I can watch you.

12 THE WITNESS: Perfect. Sorry.

13 MS. VARGAS: Your Honor, we had been discussing
14 Exhibit 19 and 20, and I would like to move to have Exhibits 19
15 and 20 moved into evidence?

16 THE COURT: I take it there's no objection thereto?

17 MR. BURGOYNE: Certainly not to 19, Your Honor.

18 THE COURT: What is 20?

19 MS. VARGAS: It's the Step 1.

20 THE COURT: Sample test questions?

21 MR. BURGOYNE: That's fine. I didn't realize we had
22 gotten to those. Thank you.

23 THE COURT: Very well. They're both admitted.

24 (Exhibits P-19 and P-20 admitted.)

25 THE WITNESS: Are we looking at one of them?

1 BY MS. VARGAS:

2 Q. Jessie, if you could look at Exhibit 19, about halfway
3 through that exhibit, it says Verbal Reasoning Section. And
4 it's page 29 of 74.

5 A. Okay.

6 Q. And if you could turn to page 31 of 74.

7 What is this?

8 A. This is a passage, the first passage.

9 Q. How would you go about answering this passage?

10 A. Well, I would --

11 Q. Answering the questions about this passage, I should say.

12 A. I would go to the questions. And similarly, I had like a
13 marked-up, annotated version from before. But I would do the
14 same thing. I would read the last line, the question line.
15 And if there was something that was like -- said like referred
16 to, paragraph whatever or line whatever, and what does this
17 word within that mean, or something like that, then I would do
18 those first, because it told me where to go. So I wouldn't
19 have to read all of the passage. And then if there were other
20 questions that I could answer or reason through without
21 reading, I would answer those.

22 And then if there were things that were like italicized
23 words or something that would be a little easier for me to
24 visually find in a passage that were talked about in the
25 question, then I would try to find those and just read around

1 those in the passage. And I think in my notes, I highlighted
2 to show where I would read and where I wouldn't.

3 Q. Would it help you remember how you answered these
4 questions if I showed you your annotated notes?

5 A. Yes.

6 MS. VARGAS: May I do that, Your Honor? I'm happy to
7 provide copies.

8 MR. BURGOYNE: I don't have any objection, Your Honor.
9 I don't know that this is an annotation of how she actually
10 answered her questions on the MCAT. It's something they
11 created for the purposes of today.

12 THE COURT: Very well. You'll have an opportunity to
13 cross-examine the witness on it.

14 MR. BURGOYNE: That's fine.

15 THE WITNESS: Thank you.

16 BY MS. VARGAS:

17 Q. So Jessie, can you explain what you did with this
18 document?

19 A. Yes. So after it was provided in the deposition, I tried
20 to explain how I would go through, but it didn't seem to be
21 very clear. So I annotated the document, and I went through --
22 like for the physical sciences, I went through and kind of
23 showed like the order I would go through and how I would do
24 that.

25 But for the verbal reasoning, where it was pretty much all

1 reading, it was harder for me to just -- there was no formulas
2 really for me to show like what formula I would use. So I went
3 through, and I basically had to take this in order to annotate
4 it.

5 And so I went through like I would go through it if I were
6 taking it, and then tried to annotate what I was doing as I did
7 it.

8 And so for like 43, I would read it, which says: Which of
9 the following developments would be least likely to be useful
10 to photo trappers? And then I would read the answer choices
11 and see if there were anything that I could rule out.

12 But since I don't really know what photo trappers are, I
13 would probably look back at this document and see if I could
14 find where it was in there.

15 And just kind of glancing, I saw where there were like
16 two dashes in the fourth paragraph, which kind of caught my
17 attention. And then I saw next to it was photo trapper. And
18 so then I recognized that and said so. And then would have
19 read a little bit around there.

20 But -- and then I went through and did kind of the same
21 thing for each question. But apparently when I did this for
22 real, I probably, because I didn't know what photo trappers
23 were, I went to 44 and then started with that one. And it
24 said: What was the main purpose of the fourth paragraph of --
25 I'm sorry, the main purpose of the fourth paragraph of the

1 passages to. And then -- so because it pointed to the fourth
2 paragraph, I would go through and read the fourth paragraph and
3 then recognize the photo trapper from the first question. And
4 then reading that paragraph, I think I would have guessed on
5 the main purpose. And I ruled out A and B, and then I would
6 have guessed on D.

7 Do you want me to reason through that or --

8 Q. No. So looking at the passage, how much of that passage
9 would you have read in order to answer the questions?

10 A. Well, I tried to show where I would read by like
11 underlining or describing where I would start reading or -- and
12 reading. And so I calculated -- sorry.

13 I calculated like how many words versus how many words
14 were in the whole passage. And I did that by copying the
15 passage and putting it in Word and using word count. And then
16 where I would start reading and end reading on here, I would
17 highlight that in the Word document and have it do the word
18 count for me. So I would figure out how many words I actually
19 read of the actual passage, which is at the top of the page.
20 And I did that for each passage.

21 Q. So all of the cross-throughs and the highlights and the
22 red words that are on this document, who wrote those?

23 A. I did.

24 Q. Did anybody help you with that?

25 A. No.

1 MS. VARGAS: Your Honor, I would like to move to admit
2 her annotated verbal reasoning section into evidence.

3 THE COURT: Okay. No objections, it will be admitted
4 into evidence.

5 MR. BURGOYNE: You're correct, Your Honor. No
6 objection.

7 THE COURT: Very good.

8 (Exhibit P-19A admitted.)

9 MS. VARGAS: Is that 19A?

10 THE COURT: Is this an additional number that you're
11 submitting? What was the last number?

12 MS. VARGAS: This was an annotation of Exhibit 19.

13 THE COURT: Right. So you want to have it marked as
14 19A?

15 MS. VARGAS: Yes, please. Thank you.

16 THE COURT: Very well. We'll mark it as 19A.

17 MS. VARGAS: Thank you.

18 Should I give a copy to the Court?

19 THE COURT: Sure. Put it right down there. And we'll
20 include it in our -- that's fine.

21 BY MS. VARGAS:

22 Q. If you could turn to Exhibit 13.

23 A. Okay.

24 Q. Do you recognize that document?

25 A. Yes. That's our medical student policy manual or our

1 handbook.

2 Q. And is this the handbook that's in effect currently at
3 your medical school?

4 A. I believe so.

5 MS. VARGAS: I would like to move to have Exhibit 13
6 admitted into evidence.

7 MR. BURGOYNE: No objection, Your Honor.

8 THE COURT: It's admitted.

9 (Exhibit P-13 admitted.)

10 BY MS. VARGAS:

11 Q. And then turning to Exhibit 14.

12 A. Okay.

13 Q. If you could turn to page 8 of 13.

14 A. Okay.

15 Q. Do you recognize this document?

16 A. Yes.

17 Q. What is this?

18 A. This is a letter from my school, specifically from Dr. Z
19 or Ziemkowski in response to my request for an extension to my
20 leave of absence.

21 Q. And what was the school's response to your last request
22 for a leave of absence?

23 A. That they would only extend it until March 2nd.

24 Q. And after March 2nd what happens?

25 A. If I can't get accommodations and take the test by then, I

1 will be forced to withdraw or I will be dismissed from the
2 program and I will be done.

3 Q. What happens if you withdraw from the program?

4 A. Technically, I can reapply, although I was told very --
5 they made a point of telling me that doesn't mean that they
6 will re -- like re-accept me to the school, just that I have
7 the opportunity to reapply, versus if I was dismissed from the
8 school, then I would not be allowed to reapply.

9 Q. Would you be able to apply to other schools if you were
10 dismissed from Western Michigan?

11 A. I could apply, but the chances of me being accepted
12 because I had already been enrolled in another school and been
13 forced to withdraw or withdrawn and I had not already passed
14 Step 1, then I would have a very -- it would be very unlikely
15 for me to be accepted anywhere.

16 MS. VARGAS: I would like to move to have Exhibit 14
17 admitted into evidence. This is the packet of leave of absence
18 documents.

19 MR. BURGOYNE: No objection, Your Honor.

20 THE COURT: Very well. It's admitted.

21 (Exhibit P-14 admitted.)

22 BY MS. VARGAS:

23 Q. Jessie, why is it important to you to have accommodations
24 on Step 1?

25 A. Because the accommodations I requested are the

1 accommodations I need in order to be able to read all of the
2 questions and therefore have the opportunity to answer the
3 questions based on my knowledge. And if I don't have the
4 opportunity to read all of the questions, then the score that I
5 get isn't an accurate representation of what I actually know
6 and my competency of the material. And if I don't have the
7 opportunity to show that, then my score doesn't accurately
8 reflect -- like if I pass, I should be able to know that I
9 passed because I knew the material. And if I fail, I should be
10 able to know that I failed because I didn't know the material,
11 not because I wasn't able to read the questions and have an
12 opportunity to answer them, like other students get to.

13 Q. And what importance, if any, does your score have on
14 residency match?

15 A. It's huge. That's the first thing that programs look at.
16 And if you failed, they may not even look at the rest of your
17 application. It may get filtered out before they even see your
18 name. And if you have -- if you have a low score even, like if
19 you pass and have a low score, they still may filter you out.
20 So it's huge.

21 Q. If you had received a 192 on Step 1 without accommodation,
22 do you believe that would have been representative of your
23 ability?

24 A. No.

25 Q. Why not?

1 A. Because it would have been a score based on me only
2 getting to read part of -- like some of the questions and not
3 all of them. So they don't know whether I don't know that
4 material or I never got to see the questions and didn't answer
5 the questions based on my knowledge, so they were just random
6 guesses.

7 So when my score is compared to everyone else, my score
8 looks like -- they take it at face value, like that was my
9 ability. And they don't know that I didn't get to answer or
10 see -- read the questions for a large portion of the test, and
11 they don't know that I actually do know the material and I can
12 do this. And they think that I am not as competent as other
13 students, and so they don't give me the opportunity to show
14 that.

15 Q. What will you do if you can't take Step 1 by March 2nd?

16 A. I don't know. I haven't gotten that far.

17 Q. How many of the questions on your Step 1 attempt do you
18 estimate that you could read completely?

19 A. On Step 1?

20 Q. Uh-huh.

21 A. I believe it was 65, about 65 percent, to 70.

22 Q. How do you make that estimate?

23 A. When I was going through the test, based on how I had gone
24 through, you have an option to like mark the question. So by
25 the time I hit that five-minute warning and I had to fill in

1 guesses, the ones that I had guessed on, I marked. And I like
2 kept track of about how many I had marked or had -- that were
3 left when I guessed on them for each section. And it was
4 roughly overall about 65 percent of the ones -- sorry, like
5 35 percent I had guessed on. And I had only gotten to about
6 65 percent, an average over all of the sections.

7 Q. How did you prepare, study for Step 1?

8 A. I did a lot of things. I listened to Pathoma lectures and
9 watched them. And they show you pictures and they talk about
10 it and they relate everything to not only a clinical context
11 but the test and how it -- like how it's important to the test.
12 And I used First Aid, which is a book -- a review book that's
13 well known. All of these sources are well known for medical
14 students. But it's like the bible of studying for Step 1. And
15 it is a review source.

16 And then I also used the UWorld question bank and Kaplan
17 question bank. And I would go through those questions and then
18 answer them. And if I got them wrong, or even if I got them
19 right but maybe didn't know exactly why it was right or I
20 wasn't confident on the material, it would give an explanation.
21 And I would read and process that explanation. And then I
22 would write it into my First Aid book and draw pictures like in
23 the relevant section. And then if there wasn't enough room to
24 fit it there, I would do it on notebook paper and shove that in
25 my book in there, so it would be in there.

1 And then I would watch a lot of online videos, like
2 OnlineMedEd or the Pathoma, which breaks things down but it
3 walks you through. And it's visual, and somebody is talking to
4 me so I don't have to read it, so it helps me process and
5 review a lot faster than if I were to have to read it. And
6 then I compile all of this, and I write it down and I keep
7 doing questions and I repeat.

8 We would do practice questions with like friends who were
9 also studying -- or sorry, practice tests. And they would read
10 the question and then we would both like separately select our
11 answer and then go through the explanation.

12 Q. What do you mean, they would read the question?

13 A. My friends who are supportive of me and study with me,
14 they read the questions out loud so that I don't have to read
15 them. And also it doesn't slow them down waiting for me to
16 read the question and get to my answer while they've already
17 read it and got their answer. And since it's like a -- it's a
18 really fast-paced time. Everybody is trying to cram as much
19 knowledge into their brains as possible before they take Step 1
20 over like the course of a couple months.

21 And so if I'm there slowing them down, like that's not
22 okay. And so they would read it so that I could get the
23 material and answer the question. And they could do it, so...

24 Q. Have you done any preparation for Step 2?

25 A. Yes.

1 Q. What is Step 2, Step 2CK?

2 A. CK is clinical knowledge, which is a similar test to Step
3 1 in that it's computerized, like written test, like multiple
4 choice questions. But it is more clinically focused, but
5 because of that, the questions are longer and have more
6 information in them that you have to like analyze in order to
7 answer the question.

8 Q. Can you explain what you mean by the questions are longer?

9 As compared to Step 1, how much longer are they?

10 A. I'm not sure exactly, but I just know that looking at the
11 screen, like if a Step 1 question is like this, the Step 2 can
12 be anywhere from like a paragraph to like sometimes they're
13 like a page. And they have more information, like labs and
14 stuff, whereas the Step 1 does have labs and stuff that you
15 have to coordinate or consider in coordination with the other
16 information sometimes, but Step 2 has a lot of more of that,
17 because it's more clinical. So there's a lot -- there's more
18 information you have to integrate to answer the question.

19 Q. Will you need accommodations for Step 2?

20 A. Yes.

21 Q. What accommodations will you need for Step 2?

22 A. Specifically CK?

23 Q. Yes, I'm sorry, for CK.

24 A. I will need double time and I will need a separate room
25 and break time, just like I do for Step 1.

1 Q. At any point did you request that the NBME provide speech
2 reading for your test?

3 A. No.

4 Q. Why not?

5 A. I didn't know that it was allowed. I didn't know it was
6 something they offered. It was a fairly new thing. I didn't
7 know it was available for a long time as an accommodation in
8 general. And so by the time I found out, it was pretty -- I
9 think I was in my -- as a test accommodation, let's see -- I
10 think it was in med school when I realized it was a thing. So
11 I didn't know I was allowed to ask for it.

12 Q. Would that help you?

13 A. I believe -- I believe it would, but I would have to know
14 the system that was used. Like I wouldn't -- I wouldn't -- it
15 would help me to have something read to me as opposed to me
16 struggling to read through it, but if I didn't know how to use
17 the system that they use on the test before going into the
18 test, then I wouldn't want to like waste time trying to figure
19 that out on the test, if that makes sense.

20 Q. Did you ever request that the NBME provide you with paper
21 tests rather than a computerized version?

22 A. Not -- I don't think for Step 1, but for the other NBME
23 exams that our school receives or gives, like the shelf exams
24 or the -- they're called like CBSE exams, the comprehensive
25 basic science exams that our school gave, they had requested

1 from the NBME that the test be given on paper because that's
2 how they provided their exams to me. And the NBME responded to
3 them that that wasn't allowed, they don't give anyone tests on
4 paper, because it's a computerized exam. And so I assumed that
5 that was not allowed at all, so I didn't request that for my
6 Step 1 exam.

7 Q. What accommodations -- did you have accommodations for the
8 other NBME exams you took that you just mentioned?

9 A. The CBSE ones?

10 Q. Yes.

11 A. For the ones that counted for our -- either like moving on
12 into third year, the clinical year, or the ones that were like
13 shelf exams, I did have accommodations.

14 Q. What did you have?

15 A. I had the double time, the separate room and the colored
16 dry erase markers. And then my meds and the water bottle and
17 the granola bar in the room. But I didn't use -- there was a
18 couple exams at the end after my third year -- after I had
19 found out that I was not receiving accommodations because the
20 NBME had denied them but before I took Step 1 -- that our
21 school had us take the CBSE again as a formative exam, which is
22 their term for it doesn't count as a grade, it's only for like
23 informing us -- seeing how we would do on Step 1. It was sort
24 of a benchmark.

25 And then I had been approved for the same accommodations

1 that I received on all the other NBME exams, but because I knew
2 I wasn't receiving accommodations for the Step 1 exam, I
3 decided to try to simulate a timed -- a standard timed exam.
4 So I had the proctor tell me when it was five minutes to the
5 end of a normal block, which I believe is an hour, and then I
6 would do the same thing as I would and mark whatever I hadn't
7 and pick an answer, whatever I hadn't gotten to. And when it
8 was 60 minutes, the proctor would tell me, and I would submit
9 that section and move on. So I tried to simulate what my Step
10 1 would be like.

11 Q. Did you have enough time?

12 A. No.

13 Q. Did you say that you -- did you testify that you took
14 practice exams for Step 2?

15 A. Yes.

16 Q. And how much -- did you have a sense of how much you were
17 able to read of the questions on the sample Step 2 exam?

18 A. Yeah. It was like 50 at most. The questions are a lot
19 longer, so I couldn't read as many of them.

20 MS. VARGAS: I have no further questions.

21 THE COURT: Very well.

22 Cross-examination.

23 MR. BURGOYNE: Thank you, Your Honor.

24 Good morning, Jessica.

25 THE COURT: Afternoon.

1 THE WITNESS: Good morning. Afternoon.

2 MR. BURGOYNE: Afternoon, yes. Where has the day
3 gone?

4 CROSS-EXAMINATION

5 BY MR. BURGOYNE:

6 Q. Let me ask you a few questions for follow-up before we get
7 into another line of inquiry.

8 Specifically relating to your status in medical school, as
9 I understand it, you've been told by your medical school that
10 you are required to take the Step 1 exam prior to March 2,
11 2020; is that correct?

12 A. I am required to -- in order to return to the curriculum,
13 I have to take Step 1, but in order to stay in the curriculum,
14 I have to pass Step 1.

15 Q. But by the date March 2, that's when you have to take the
16 exam?

17 A. Yeah.

18 Q. And the medical school has told you that you have the
19 option of voluntarily withdrawing?

20 A. Yes.

21 Q. And you can apply for readmission if you were to do that?

22 A. Yes. They have said that.

23 Q. There was a little bit of testimony there at the end about
24 the Step 2 CK exam.

25 Are you registered to take the Step 2 CK exam?

1 A. Not anymore.

2 Q. Were you ever registered to take the Step 2 CK?

3 A. Yes.

4 Q. When were you registered?

5 A. I'm not exactly sure, but it was shortly after -- the
6 first time was shortly after I was registered for the Step 1
7 exam the first time, so it would have been I think in the fall
8 of 2017. But I didn't get to take it because I failed Step 1.
9 And then I may have registered another time, but I don't know.
10 I don't remember.

11 Q. And there's nothing in the letter that you received from
12 your school regarding your leave of absence that relates to the
13 Step 2 CK exam. Is that --

14 A. Not that I recall, there isn't anything.

15 Q. Let me make sure I understand your allegations regarding
16 the impairments that you've experienced and the impact they've
17 had on you.

18 I'll bring you a different set of exhibits, because
19 they're -- and I'll try to work out of these so you don't have
20 to go back and forth.

21 Let me get that out of your way.

22 MS. MEW: Your Honor, would you like these?

23 THE COURT: Yes. Just put them down there.

24 BY MR. BURGOYNE:

25 Q. Here is the RDX number. This will be Exhibit 1. And then

1 I'll be asking you sometimes about tabs that are within an
2 exhibit, to help orient you.

3 Let's look at one of the personal statements that you
4 provided in support of your accommodation requests. If you
5 look at the first exhibit, and then go to Tab A.

6 A. Okay.

7 Q. And then will you go to page 9 of that document. This is
8 your June 6, 2018 personal statement.

9 A. Page 9?

10 Q. Page 9, yes.

11 A. Okay.

12 Q. At the bottom.

13 A. What about it?

14 Q. Okay. You found that page?

15 A. Yeah.

16 Q. Okay. And this is the personal statement you described
17 earlier as something you had worked on for a month or longer?

18 A. Is this the first one or second one I filed?

19 Q. This is your second one.

20 A. I believe I spent about a month on it, if not more.

21 Q. And if you look at the second paragraph here, there's a
22 statement that reads: The effects that ADHD and learning
23 disabilities have on my life are most quantifiable when
24 assessing my academic performance, but they do not just affect
25 school. For me they are a 24 /7 thing.

1 Are those accurate statements?

2 A. Yes.

3 Q. Look at Exhibit 1, Tab C, if you would, please.

4 A. Okay.

5 Q. And do you recognize this document?

6 A. I believe this is Dr. Smith's report.

7 Q. Right. And he's the doctor you went to see in support of
8 your request for reconsideration when you were denied
9 accommodations?

10 A. The -- yes. The third time. Yeah.

11 Q. And look, if you would, please, at page 4 of his report.

12 And you'll have to look at the top of the document for the page
13 numbers.

14 A. Okay.

15 Q. And there's a statement that says that Ms. Ramsay,
16 Jessica, had a history of academic struggle that began from
17 hers first days in school --

18 A. I'm sorry, where are you?

19 Q. Right under School History.

20 A. Okay.

21 Q. Do you see that language?

22 A. Yes.

23 Q. So it reads: Ms. Ramsay, Jessica, has a history of
24 academic struggles that began from her first day in school and
25 has consistently required accommodation such as extended time

1 on tests and assignments, altered grading schemes, frequent
2 breaks and a private space for testing and completing class
3 work in order to compensate for distractibility, impaired
4 attention and concentration, impaired reading comprehension,
5 impaired reading speed and hyperactivity.

6 Is that information you provided to Dr. Smith?

7 A. I provided my history and current symptoms at the time
8 that he evaluated me, and he put the information he thought was
9 relevant or important into the report.

10 Q. A slightly different question, but are those statements
11 accurate?

12 A. Yes.

13 Q. So you've had a history of academic struggle that began
14 from your first day in school?

15 A. From what I remember, yeah, from the beginning of school.

16 Q. And then look, if you would, please, at page 5, the next
17 page here.

18 A. Okay.

19 Q. And there's an additional discussion of your symptoms and
20 impairment.

21 And beginning in the first paragraph, there's a statement
22 discussing your experience in third grade at Carrollton-Farmers
23 Branch Public School System. That was in Texas. Correct?

24 A. Yeah.

25 Q. And you attended Carrollton-Farmers public schools through

1 the fifth grade?

2 A. Through part of fifth grade, yeah.

3 Q. And then you moved to Michigan?

4 A. Yes.

5 Q. And then there's a statement there that you were still
6 struggling with reading, writing and spelling when compared to
7 your peers, and your mother informed your teachers about your
8 history and what prior teachers had done to help Jessica.

9 Are those accurate statements?

10 A. Yes.

11 Q. And then the next paragraph states that Jessica and her
12 mother, Jerri Shold also reported that beginning in her
13 earliest school years and continuing through elementary school
14 and beyond, Jessica had severe problems in the following areas.
15 And then they walk through the various areas where you had been
16 experiencing severe problems?

17 A. Okay.

18 Q. Are those statements accurate?

19 A. Where are they on the page?

20 Q. Second full paragraph.

21 A. Which ones are you asking about?

22 Q. Well, we'll look at all of them.

23 Were you having severe problems with making mistakes in
24 your school work?

25 A. Yes.

1 Q. Were you having severe problems sustaining attention when
2 you were doing tasks or activities at school?

3 A. Yeah.

4 Q. Did you have severe problems finishing your school work
5 both at home and at school?

6 A. Yeah.

7 Q. Were you having severe problems procrastinating and losing
8 attention and being distractible?

9 A. Yes.

10 Q. If you go to the next paragraph, the last sentence,
11 there's a statement that your first, second, third and fourth
12 grade teachers noticed that Jessica had difficulty with
13 reading, spelling and writing, and each teacher provided extra
14 individual but informal remedial spelling and writing
15 instruction during those grades.

16 Are those accurate statements?

17 A. Yes. And with reading.

18 Q. So they were also providing assistance with reading that
19 was referenced here?

20 A. Yeah.

21 Q. And are you aware of any written evidence to support those
22 statements, or is that based on information you provided to Dr.
23 Smith?

24 A. I believe it was both some comments on either report cards
25 or progress reports or something that we had at the time, and

1 as well as the history provided by myself and my mom who had
2 better memory of what happened when -- at least with the
3 teachers, or discussion with the teachers when I was younger.

4 Q. So the struggles began in elementary school. They
5 involved reading, writing and spelling. Your teachers were
6 aware of those struggles?

7 A. I believe so, which would be why they would work with me.

8 Q. And your parents were aware of those struggles?

9 A. I think in some ways. I don't know if they knew the
10 extent.

11 Q. And so I take it you were not able to mask the problems
12 you were having by virtue of your intelligence or your
13 knowledge of a given subject, they were still aware of the
14 issues you were having?

15 A. Again, I don't think they knew the extent. I think they
16 were aware that I was struggling to read because I was an
17 extremely slow reader or would struggle to read like story
18 problems for math, so they would read it to me. But I think
19 because I was working hard and trying to do the things, they
20 helped me to do them. And so they were aware that I needed
21 extra help to do these things.

22 Q. Look, if you would, at your personal statement that you
23 provided in support of your initial request for accommodations
24 on the Step 1 exam, which is Defendant's Exhibit 4, Tab B.

25 A. You said B? You said Tab B?

1 Q. Tab B as in boy, yes.

2 A. Okay.

3 Q. In that document, you'll look at page 2, first full
4 paragraph. There's a discussion of a teacher in the second
5 grade who had noticed trouble that you were experiencing with
6 letter reversals.

7 A. Uh-huh.

8 Q. And then it goes on to say that she provided you with an
9 alphabet chart?

10 A. Uh-huh.

11 THE COURT: That's a yes?

12 THE WITNESS: Yes, sorry.

13 BY MR. BURGOYNE:

14 Q. And then put you in what's referred to here as a time-out
15 desk?

16 A. Yes.

17 Q. I believe in your testimony earlier, you said that was
18 your first grade teacher. Is it in fact your second grade
19 teacher?

20 A. No. I believe it was actually my first grade. My memory
21 at the time that I wrote this, I wasn't sure. But then when he
22 looked back at the timeline of everything, figured out that it
23 was my first grade teacher. But I also had these things -- the
24 alphabet chart and the separate desk in second grade, so I
25 remembered having it in second grade too.

1 Q. Look at the last two, three sentences of this paragraph,
2 if you would, please.

3 After discussing those accommodations that you received
4 from the teacher -- and you're saying that was in both the
5 first grade and the second grade?

6 A. And later too, but...

7 Q. And these were informal accommodations. Right?

8 A. Correct.

9 Q. They weren't anything that the school had officially
10 approved for you?

11 A. I wouldn't know. I just know that the teacher provided
12 them.

13 Q. Okay. Well, in fact you say in your next sentence here,
14 you address that issue. You say: Unfortunately, these
15 accommodations were unofficial, enacted by my teacher rather
16 than the school, so I do not have any record that they were
17 provided. Other than this visual testing --

18 And you're referring there to the evaluation you had by
19 Dr. Tanguay; is that correct?

20 A. Yes.

21 Q. And you say: Other than this visual testing, I was not
22 evaluated for learning disabilities until 2009 and so did not
23 receive any other aid or accommodation. Consequently, I have
24 little supporting documentation from my childhood.

25 Was it accurate, as you said in this report, that you did

1 not receive any other aid or accommodation, informal or formal,
2 during your educational years?

3 A. I believe in my mind when I wrote this, I was referring to
4 formal accommodations, because I didn't receive other formal
5 accommodations. I did receive informal accommodations
6 throughout my education.

7 Q. But this paragraph, you agree, is dealing with informal
8 accommodations that you received?

9 A. Are you asking if it's talking about I did not receive any
10 other informal accommodations?

11 Q. No. When you were discussing the alphabet charts and the
12 time-out chair, that was an informal accommodation?

13 A. Yeah. That's what I remember. We don't have
14 documentation of them.

15 Q. Look at the bottom of this paragraph. And there's some
16 discussion that overlaps with some testimony you gave this
17 morning.

18 First of all, at the end of that paragraph that begins
19 "growing up," there's a statement: I rarely got an exam grade
20 that accurately reflected how much I knew.

21 Was that an accurate statement?

22 A. Yes.

23 Q. You then go on to discuss your -- then you had tested into
24 the ACE, Academic Creative Education program in elementary
25 school when you lived in Texas.

1 And that was an accelerated program, I think you said, for
2 math?

3 A. I believe it was accelerated and it was math.

4 Q. Then you go on to say that when you moved to Michigan, you
5 had to wait until the end of the year to test into an
6 accelerated program that started in the sixth grade in Michigan
7 and continued through high school.

8 So were you in an accelerated educational program from
9 sixth grade through high school while you were in Michigan?

10 A. Just in math.

11 Q. Just in math. You were first diagnosed with dyslexia in
12 2018 by Dr. Smith. Correct?

13 A. Yes.

14 Q. And how old were you at that time?

15 A. I would have been 28 probably, depending on the month. I
16 think that was in the fall, so yeah, 28.

17 Q. And you were first diagnosed with ADHD in 2009 by Dr.
18 Smiy?

19 A. Yes.

20 Q. And at that point you were a sophomore in college?

21 A. I believe so.

22 Q. Look again, if you would, please, at your personal
23 statement, which was Defendant's Exhibit 1, Tab A. And this is
24 again a personal statement that you sent to NBME in support of
25 your second request for accommodations?

- 1 A. Okay.
- 2 Q. Look at page 8, if you would, and the second full
- 3 paragraph that begins "in 2009."
- 4 A. Under the asterisks?
- 5 Q. Yes.
- 6 A. Okay.
- 7 Q. Do you see that paragraph?
- 8 A. Yes.
- 9 Q. Did you see the statement: Dr. Smiy also clinically
- 10 diagnosed me with dyslexia but did not recommend further
- 11 workup.
- 12 Did accurate that Dr. Smiy clinically diagnosed you with
- 13 dyslexia in 2009?
- 14 A. I'm sorry, where is it, the sentence you're talking about?
- 15 Q. The last sentence in that paragraph.
- 16 A. Okay. And then what was your question again?
- 17 Q. Whether Dr. Smiy clinically diagnosed you with dyslexia,
- 18 as you informed the NBME in 2008?
- 19 A. Yes.
- 20 Q. Okay. So which is it? I thought you were first diagnosed
- 21 with dyslexia by Dr. Smith or -- Dr. Smith in 2018, and here
- 22 you're referring to having been diagnosed by Dr. Smiy in 2009?
- 23 A. My understanding at that time was that it could be
- 24 clinically diagnosed not just with neuropsychological testing.
- 25 And so I -- from my understanding, he had clinically diagnosed

1 me with dyslexia. He just hadn't referred me for the
2 neuropsychological evaluation which later was provided by Dr.
3 Smith in...

4 Q. And what's the documentation that you can point us to that
5 reflects his clinical diagnosis?

6 A. When he filled out the form for OSU and wrote on there.

7 Q. And that's a form that was verifying the fact that you had
8 ADHD?

9 A. Yes.

10 Q. Look if you would, please, at Defendant's Exhibit 8 and
11 let's go through some of your educational records.

12 A. You said 8?

13 Q. Defendant's Exhibit 8. This colorful page with stickers.
14 Do you recognize Exhibit 8 as records that you obtained
15 from your kindergarten years?

16 A. Yes.

17 Q. And you don't have to spend much time on these, but was it
18 the general practice that if you were doing everything you were
19 supposed to do and exhibiting proper behavior, you would get a
20 sticker for that week?

21 A. I don't know about everything, but generally if you
22 weren't misbehaving or causing too many problems, you would get
23 a sticker. I mean, it's kindergarten, so...

24 Q. There are various comments provided in the kindergarten
25 report by your teachers?

1 A. I'm sorry, what was the question?

2 Q. Yeah. Your teachers in kindergarten provided comments,
3 didn't they?

4 A. Sometimes.

5 Q. Look, if you would, at Defendant's Exhibit 9.

6 And I believe you testified earlier that some of your
7 particular struggles were occurring in grades 1 through 4; is
8 that correct?

9 A. They were always occurring.

10 Q. Okay.

11 A. But they were probably -- I received the most help in
12 grades 1 through 4.

13 Q. Let's look at Exhibit 9, which is in fact your report card
14 from kindergarten.

15 A. Okay.

16 Q. Do you see there's comments on the left side?

17 A. Yes.

18 Q. Jessica is a wonderful student, works hard in class,
19 always does her best. Making good progress in all areas.
20 Becoming more assertive and independent, doing well in class,
21 very nice girl.

22 And is that your mother's signature there?

23 A. Yes.

24 Q. And then the next page is your grades for that year?

25 A. Okay.

1 Q. And then it has your general work habits over there and
2 your social development.

3 And were there any work habits such as adequately paying
4 attention, your adequate attention span, or showing personal
5 organization in which you were given anything other than
6 excellent progress?

7 A. Just under the social development and conduct one,
8 there's --

9 Q. That has to do with self-confidence. Right?

10 A. Yeah.

11 Q. Look if you would, please, at Defendant's Exhibit 10.
12 Is this a first grade report that you provided?

13 A. Yes.

14 Q. And look at the second page of this document for me.

15 A. Okay.

16 Q. And again, are these the grades that you received in first
17 grade?

18 A. Yes.

19 Q. And you got a grade for phonics, which was a 94. And your
20 reading grade was E at that time, and that reflected excellent
21 progress?

22 A. Yeah, excellent progress.

23 Q. Defendant's Exhibit 11 is your second grade report card
24 from kindergarten or from Sunset Oaks Academy; is that correct?

25 A. Yes.

1 Q. And then on page 2, are those your grades from the -- from
2 that grade?

3 A. Yes.

4 Q. And you had a 94 in phonics, S plus in reading and then 97
5 in spelling; is that correct?

6 A. Yes.

7 Q. Exhibit 12 is the report card you produced. And this is
8 your physical education report card which just addresses your
9 conduct in physical education; is that right?

10 A. Yes.

11 Q. Exhibit 13. Now we're at Carrollton-Farmers Branch School
12 District, which was the school we discussed a few minutes ago
13 in Texas where you indicated that I believe you had time --
14 were struggling there as well?

15 A. Yes.

16 Q. And the first one is your grade 3 report card; is that
17 correct?

18 A. Yes.

19 Q. And on the bottom left of the first page, does that
20 indicate that you had achieved mastery in reading?

21 A. I'm sorry, yes.

22 Q. And then there's a place where it looks like where your
23 mother could indicate whether you needed any tutorials.

24 And did she indicate at that time that you needed any
25 tutorials?